S. HRG. 107–1059

S. 637, INDIVIDUAL FISHING QUOTA ACT OF 2001

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

MAY 2, 2001

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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CONTENTS

WITNESSES

APPENDIX

S. 637, INDIVIDUAL FISHING QUOTA ACT OF 2001

WEDNESDAY, MAY 2, 2001

U.S. SENATE,
SUBCOMMITTEE ON OCEANS AND FISHERIES,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:31 a.m. in room SR–253, Russell Senate Office Building, Hon. Olympia J. Snowe, Chairman of the Subcommittee, presiding.

OPENING STATEMENT OF HON. OLYMPIA J. SNOWE, U.S. SENATOR FROM MAINE

Senator SNOWE. The hearing will come to order.

Before I begin, I would like to welcome all the witnesses and my colleagues and others in attendance today to this most important hearing. Before I deliver my opening statement, it is my pleasure as well as my privilege to introduce to you the Senate Majority Leader, Senator Trent Lott, who is going to give a statement. I really appreciate the Leader being here this morning. I know you are so busy with your schedule and I appreciate your taking the time to stop by and deliver a statement. Welcome.

STATEMENT OF HON. TRENT LOTT, U.S. SENATOR FROM MISSISSIPPI

Senator LOTT. Well, thank you very much, Madam Chairman. We appreciate the fact that you are having this hearing, and I am quite pleased that you are the chairman of this Subcommittee on Oceans and Fisheries. Of course, living on the Gulf of Mexico, I care an awful lot about our fisheries nationwide and in the region. I know that you have the same concerns there in Maine and that part of the United States.

Fisheries is an important part of our economy in this country and certainly in the Gulf of Mexico, and what we want to try to do is to be helpful to the fisheries industry, make sure we have a balanced approach that does allow our commercial fishermen to make a living and our recreational fishermen to have an opportunity to enjoy our waters, and also reasonable practices for conservation purposes and make sure that we do not deplete or destroy resources. So this is a delicate balance.

Unfortunately, in the Gulf we have had a hard time maintaining that balance and we have sometimes had problems with the National Marine Fisheries and even the Gulf Regional Fisheries Council trying to get a balance and trying to get reasonable and

livable activities from them. So I think to have a hearing on this bill is timely. I appreciate the fact that you have developed one. I would be very interested and will review the testimony of the witnesses here. You have a very good group of witnesses lined up.

I am particularly pleased to welcome Mrs. Harlan Kay Williams from my home area. She is a very articulate spokesperson for the Gulf and she has been willing to give time, and has a very patient husband that allows her to make trips like this and speak up for the commercial fisheries industry and fisheries as a whole.

Just so you will all know, every time that I meet with Secretary of Commerce Evans the first thing I say to him is: Think fish. So now I saw him the other day and he said: I am thinking fish, I am thinking fish. And I got a letter from him with a little fish drawn at the bottom. So I think we are making progress with our new Commerce Secretary, and I look forward.

I will not get into commenting further or even submitting questions at this point. I will stay as long as I can, but I look forward to seeing what the witnesses have to say. Thank you, Madam Chairman.

Senator SNOWE. Thank you. Well, I thank you very much, Leader, for your comments and your interest in support of this very vital industry to our respective regions of the country and to the Nation as a whole.

This hearing will address one of the most difficult policy questions in fisheries management, the use of IFQ's. In particular, the Subcommittee will focus today on S. 637, the Individual Fishing Quota Act of 2001, that I introduced along with Senator McCain. The IFQ Act amends the Magnuson–Stevens Act to authorize the establishment of a new individual quota system after the current moratorium expires on October 1st of 2002.

Last year, I introduced legislation to reauthorize the Magnuson–Stevens Act and extend the moratorium on new IFQ programs for 3 years until 2003. Congress ultimately extended the moratorium for 2 years, through fiscal year 2002, with the help of Members of this Subcommittee. It is my hope that the combination of the moratorium extension and discussions of the legislation before us today will provide fishermen and fisheries managers time to prepare for the possibility of using IFQ's as a management option.

However, I want to make one thing clear today. The legislation we are considering will in no way force IFQ's upon any regional management council or fisheries. S. 637 is not a mandate to use IFQ's. We have introduced this bill to begin the necessary dialogue before Congress can authorize the councils to develop new IFQ's. I expect to hear from a wide range of stakeholders who will help the Subcommittee shape the final legislation.

We all know that IFQ programs can drastically change the face of fishing communities and fishery conservation and management regimes. Therefore, this legislation needs to be developed in a careful and meaningful way. This bill sets conditions under which new IFQ's may be established and ensures that any council that establishes new IFQ's will promote sustainable management of the fishery, require fair and equitable allocation of individual quotas, minimize negative social and economic impacts on local coastal commu-

nities, and take into account present participation and historical fishing practices of the relevant fishery.

Additionally, the bill requires the Secretary of Commerce to conduct a double referendum to ensure that those most affected by IFQ's will have the opportunity to formally approve both the initiation and the adoption of any new IFQ program.

The legislation does not authorize fish processing companies to hold IFQ's. I am certain this is one of the areas that will be the subject of considerable debate. Likewise, the legislation does not currently allow IFQ's to be sold, transferred or leased, and this too will also be the subject of extensive discussions here today.

The IFQ Act requires participation in the fishery in order for a person to hold quota. It permits councils to allocate quota shares to entry level fishermen, small vessel owners, or crew members who may not otherwise be eligible for individual quotas.

Finally, the bill acknowledges that fishing is a dangerous and risky business and there is always the possibility that undue hardship may occur. Therefore, the bill allows for the suspension of the non-transferability requirements by the Secretary on an individual case-by-case basis.

Over the past one and a half years, the Subcommittee on Oceans and Fisheries has traveled across the country, holding six hearings on the reauthorization of the Magnuson-Stevens Act. We heard official testimony from over 70 witnesses and received statements from many more stakeholders during open microphone sessions at each field hearing. Additionally, the Maine Fishermen's Forum held an informative all-day session on IFQ's on March 1st of this year.

The IFQ Act of 2001 incorporates many of the recommendations that were made across the country, especially from those men and women who fish for a living and those who are most affected by the laws and its regulations.

Finally, this legislation specifically incorporates a number of recommendations from the 1999 National Academy of Sciences report on IFQ's and provides councils with the flexibility to adopt additional National Academy of Science or other recommendations. As with other components of the fishery conservation and management system, there is no "one-size-fits-all" solution to IFQ programs. Therefore, this bill sets certain conditions under which IFQ's may be developed, but at the same time, it clearly provides the regional councils and the affected fishermen with the ability to shape any new IFQ program to fit the needs of the fishery if such a program is desired.

Unfortunately, successful fisheries conservation and management seems to be the exception and not the rule. The decisions that fishermen, regional councils, and the Department of Commerce make are complex and often depend on less than adequate information. It is incumbent upon the Congress to provide the variety of stakeholders with the ability to make practical and informed decisions.

At a later date I will introduce additional legislation to amend the Magnuson–Stevens Act to address the fundamental problems in fisheries management—a lack of funding, a lack of basic scientific information, and the need to enhance flexibility in the decision-making process. For today, the Subcommittee will begin the dialogue on new individual fishing quota programs.

Clearly, I do not presume to offer at the outset a perfect solution to such a complex concept. Instead, the issue must be resolved through the appropriate debate and consideration by the Commerce Committee and the U.S. Senate. I look forward to and anticipate the full participation of those Senators who have expressed past interest and those who may be new to the debate.

Before I recognize other Members of the Subcommittee—and of course, we already have with the Leader and others who are going to be coming, Senator Stevens most especially—I would like to welcome our distinguished members of the first panel, and I would like to invite them to come forward, please. Our first panel will include: Mr. Pat White, who is the Executive Director of the Maine Lobstermen's Association. Pat has come here from Maine today. Pat is also a Commissioner in the Atlantic State Marine Fisheries Commission. He has been a fishermen for many years, and I know that he is very familiar with the IFQ concept, and I look forward to your testimony, Pat.

Mr. Joe Plesha will be here. He is General Counsel to Trident Seafoods. Trident is a seafoods company with a processing plant in Oregon, Washington, and of course Alaska. We also thank you for being here. He also used to be the Commerce Committee staffer who handled fisheries. I thank you for being here today.

Next, of course, as the Leader introduced, we have Ms. Kay Williams, the Chair of the Gulf of Mexico Fisheries Management Council. Ms. Williams is a representative of the Gulf commercial fishing sector. We look forward to hearing your views here today and your own experience in the industry.

We have Mr. Don Giles, President of the Icicle Seafoods. Icicle is an Alaska-based seafood company which operates processing plants in Alaska, Washington, and Oregon. Mr. Giles will provide the Subcommittee his views on IFQ's and specifically the treatment of processors under any new IFQ proposal.

Finally, we will hear from Ms. Linda Behnken, the Director of the Alaska Longline Fishermen's Association, which is based in Sitka, Alaska. Ms. Behnken is a commercial fishermen and member of the North Pacific Fisheries Management Council, and we welcome you as well, Ms. Behnken, and thank you for being here today. We appreciate your hands-on experience on these issues and more.

So let me begin by starting with your testimony, Pat, and then we will just go right down the line. Thank you.

STATEMENT OF PATTEN D. WHITE, EXECUTIVE DIRECTOR, MAINE LOBSTERMEN'S ASSOCIATION

Mr. WHITE. Thank you, Senator Snowe, Senator Lott, for allowing me to speak this morning. Good morning. My name is Pat White and I am Executive Director of the Maine Lobstermen's Association. I also, as the Senator said, serve as Commissioner to both the Pew Oceans Commission and the Atlantic States Maine Fisheries Commission, and I am a member of the Marine Fish Conservation Network. I began fishing in 1956 and currently work as a commercial lobsterman when time allows.

I would like to state up front that I am not an advocate of IFQ's, but I do realize that quota-based management may be desired by

some sectors of the industry. I compliment you, Senator Snowe, and your co-sponsor Senator McCain on your efforts to accommodate the wishes of those who favor quota-based management while being sensitive to those who are not.

In Maine and much of New England, quota-based management programs are very unpopular as an issue of serious concern to the fishermen and coastal communities. At this year's Maine Fishermen's Forum, a significant portion of the agenda was devoted to this topic. The pros and cons of quota-based management systems were discussed and recommendations were made for implementation.

Overall, participants felt that quotas are not an appropriate management tool for New England because of their effect on fishermen, fishing communities, and the health of the resource. We have watched the Grand Banks of Newfoundland, the premier commercial fishery of the world, and other important fisheries of Atlantic Canada collapse under quota management in a system very close to IFQ's.

It is imperative that you proceed with caution and carefully consider the implications quota management may have on our fisheries and fishing communities. I would like to share with you a very brief summary of the major recommendations which resulted from our Maine Fishermen's Forum meeting. In order for quota-based management to work socially or biologically, it must:

Ensure that creating quota does not privatize the public resource; ensure that quotas are not transferable; ensure that any quota program protects social and economic fabric of coastal communities; establish an equitable system which considers historic participation, protects the diversity of the fleet, and allows for new entrants; provide for long-term conservation and availability of the resource; consider an economic rather than single species management approach to the extent possible; include a data collection program which provides for timely dissemination of information on the industry; and set up a review mechanism to allow the program to be changed or undone if it is not working.

New England fisheries have long been characterized by small fishing family businesses, able to react to the natural ups and downs of various species. For example, many of Maine's lobstermen fish for lobster in the summer and fall, shrimp and scallop in the winter, and perhaps some clamming or weir fishing in between. Others what once predominantly fished for ground fish have turned to shrimp and scallop and lobster over the past few years and may wish to shift back to ground fish in the future. The ocean is highly unpredictable. We have learned to adapt. This is how we survive.

Quota-based management systems, on the other hand, have been known to result in fisheries characterized by large corporate businesses with highly sophisticated gear aimed at particular species. There is little or no room for adaptability. The corporate bottom line shapes the fisheries rather than Mother Nature's whim.

Many New England stocks have remained healthy for decades, while dozens of others are making tremendous progress under current management programs. We have certainly made our share of mistakes, but I know we have come a long way. In Maine we continue to see record landings of lobsters. Our New England scallop

stocks and many of our ground fisheries are making remarkable recoveries.

The bottom line is that our way of life and economic survival depends on the access to and availability of healthy fish stocks. Any management system, quota-based or otherwise, must recognize this.

I feel that Senator Snowe has come through her research—has been thorough in her research and has done an admirable job addressing many of these issues, which are vital to the preservation of our fishing industry. S. 637 contains language to ensure that the establishment of quotas will not result in privatization of the resource. The quota instead is considered a grant of permission to engage in activities allowed by the individual quota and shall not create or be construed to create any right, title, or interest to any fish before the fish are harvested.

Under this program, quotas can be revoked or limited. This should help safeguard the fishery in the event the program is not working.

I am pleased that the bill clearly states that individual quota shares may not be sold, transferred or leased. This language is essential to ensure that small fishermen who experience a tough year will not be bought out by large corporate interests. However, I am concerned that this bill allows transfer to family members due to hardship. I might suggest that you consider redefining this as a hardship exemption. Appointing an interim captain for a limited duration under specific circumstances is very different than permanently transferring a quota.

I am pleased to see that a condition of establishing a quota program is that it shall minimize negative social and economic impacts of the system on local coastal communities. The two referenda allowing eligible holders to approve the establishment of a program go a long way in protecting the social and economic structure of the community. These referenda encourage fishermen's participation in the decisionmaking process and the management of the resource. This ensures that fishermen buy into the program, which is essential to the success of any fishery management program.

S. 637 states that a quota system must provide for fair and equitable allocation of the quota. It calls for a quota system to take into account both present and historic fishing practices. While I understand the need to consider both these items, I feel that the emphasis should be on historical fishing practices rather than present. There are a lot of ups and downs in fishing. Present practices only provide a snapshot, while historic fishing practices show how a business has done over time.

S. 637 allows for quotas to be allocated among categories of vessels, as well as a portion of an annual harvest to be provided for entry level fishermen. These two provisions are crucial and must be compulsory components of the program.

I am encouraged to see the bill requires present fishery management plans to be studied to determine their effectiveness, so that the successful elements of these plans can be preserved and incorporated into a quota management system. It is particularly impor-

tant to consider the economic and social impacts of these plans on fishing communities.

S. 637 has also built in a provision to allow the review of quota systems and the expiration of a quota after 5 years. This ensures that the program will evaluate the quota reissuance of the program is successful. While it may be appropriate for the councils to have this authority, I strongly recommend that a peer review also be conducted.

This bill makes great strides in dealing with many issues and concerns about IFQ's. If it is necessary to lift the moratorium, this program provides a compromise allowing quota-based programs to be developed. However, I would like to remind you that New England fisheries are doing well under our current management programs and many people have serious concerns about the impacts IFQ's will have on our fishermen, communities, and the fisheries resources.

Thank you for considering my testimony and I will be happy to answer any questions later on.

[The prepared statement of Mr. White follows:]

PREPARED STATEMENT OF PATTEN D. WHITE, EXECUTIVE DIRECTOR, MAINE LOBSTERMEN'S ASSOCIATION

Good morning. My name is Pat White and I am the Executive Director of the Maine Lobstermen's Association. I also serve as Commissioner to both the Pew Oceans Commission and Atlantic States Marine Fisheries Commission and am a member of the Marine Fish Conservation Network. I began fishing in 1956 and currently work as commercial lobsterman when time allows.

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In Maine, and in much of New England, quota-based management programs are very unpopular and an issue of serious concern to fishermen and coastal communities. At this year's Maine Fishermen's Forum, a significant portion of the agenda was devoted to this topic. The pros and cons of quota-based management systems were discussed and recommendations made for implementation. Overall, participants felt that quotas are not an appropriate management tool for New England because of their effect on fishermen, fishing communities and the health of the resource. We have watched the Grand Banks of Newfoundland, the premier commercial fishery of the world, and the other important fisheries of Atlantic Canada collapse under quota management and a system very close to IFQs.

It is imperative that you proceed with caution and carefully consider the implications quota management may have on our fisheries and fishing communities. I would like to share with you a very brief summary of the major recommendations which resulted from our Maine Fishermen's Forum meeting. In order for quota based management to work, socially and biologically, it must:

1. ensure that creating quota does not privatize the public resource,
2. ensure that quotas are not transferable,
3. ensure that any quota program protects the social and economic fabric of coastal communities, does not result in consolidation and absentee corporate ownership of fisheries, or give exclusive power to elite groups,
4. establish an equitable system which considers historic participation, protects the diversity of the fleet, and allows for new entrants,
5. provide for the long-term conservation and availability of the resource,
6. consider an ecosystem rather than single species management approach to the extent possible (it was felt that IFQs inhibit any willingness to take an ecosystem approach to management),
7. include a data collection program which provides for the timely dissemination of information to the industry, and

8. set-up a review mechanism to allow the program to be changed or undone if it is not working.

New England fisheries have long been characterized by small family fishing businesses able to react to the natural ups and downs of various species. For example, many of Maine's lobstermen fish for lobster in the summer and fall, shrimp or scallops in the winter, and perhaps some clamming or weir fishing in between. Others who once predominantly fished for groundfish have turned to shrimp and lobster over the past few years, and may wish to shift back to groundfish in the future. The ocean is highly unpredictable and almost impossible to predict. We have learned to adapt. This is how we survive. Quota-based management systems on the other hand have been known to result in fisheries characterized by large corporate businesses with highly sophisticated gear aimed at a particular species. There is little or no room for adaptability. The corporate bottom line shapes the fishery rather than mother nature's whim.

Many New England stocks have remained healthy for decades while dozens of others are making tremendous progress under current management programs. We've certainly made our share of mistakes, but I know we have come a long way. In Maine, we continue to see record landings of lobster. Our New England scallop stocks and many of our groundfish species are making remarkable recoveries. The bottom line is that our way of life and economic survival depends on access to and availability of healthy fish stocks. Any management system, quota-based or otherwise, must recognize this.

I feel that Senator Snowe has been thorough in her research and has done an admirable job addressing many of these issues which are vital to the preservation of our fishing industry.

S. 637 contains language to ensure that the establishment of quotas will not result in the privatization of the resource. The quota instead is considered "a grant of permission to engage in activities allowed by the individual quota" (Section 303e, 2A) and it "shall not create, or be construed to create, any right, title or interest in or to any fish before the fish is harvested" (Section 303e, 1B). Under this proposed program, quotas can be revoked or limited. This should help safeguard the fishery in the event the program is not working.

I am pleased that the bill clearly states that "individual quota shares may not be sold, transferred or leased" (Section 303e, 6A). This language is essential to ensure that a small fisherman who experiences a tough year will not be bought out by a large corporate interest. However, I am concerned that this bill allows transfer to family members due to hardship (Section 303e, 7). I suggest that you consider redefining this as a hardship exemption. Appointing an interim Captain for a limited duration under specific circumstances is very different than permanently transferring a quota.

I am very pleased to see that a condition of establishing a quota program is that it "shall . . . minimize negative social and economic impacts of the system on local coastal communities" (Section 303e, 1Diii). The two referenda allowing eligible holders to approve the establishment of a program go a long way in protecting the social and economic structure of the community (Section 304i). These referenda encourage fishermen's participation in the decision making process and the management of the resource. This ensures that fishermen buy in to the program which is essential to the success of any fishery management program.

S. 637 states that a quota system must "provide for fair and equitable allocation of the quota" (Section 303e, 1Dii) and calls for a quota system to take into account both present participation and historical fishing practices (Section 303e, 1Dv). While I understand the need to consider both these items, I feel that the emphasis should be on historical fishing practices rather than present. There are a lot of ups and downs in fishing. Present practices only provide a snapshot while historical fishing practices show how a business has done over time.

S. 637 bill allows for quotas to be allocated among categories of vessels as well as a portion of the annual harvest be provided for entry level fishermen (Section 303e, 4A&B). These two provisions are crucial and must be compulsory components of the program.

I am encouraged to see the bill requires present fishery management plans be studied to determine their effectiveness so that the successful elements of these plans can be preserved and incorporated into a quota management system (Section 304j). It is particularly important to consider the economic and social impacts on these plans of fishing communities.

S. 637 has also built in a provision to allow for the review of the quota system and the expiration of a quota after 5 years (Section 303e, 2E). This ensures that the program will be evaluated and quota reissued if the program is successful.

While it may be appropriate for the Councils to have this authority, I strongly recommend that a Peer Review also be conducted.

This bill makes great strides in dealing with many issues and concerns about IFQs. If it is necessary to lift the moratorium, this program provides a compromise allowing quota-based programs to be developed. However, I'd like to remind you that New England fisheries are doing well under our current management programs and many people have serious concerns about the impact IFQs will have on our fishermen, communities and fishery resources.

Thank you for your consideration of my testimony.

Senator SNOWE. Thank you. Right on the mark at 5 minutes. If you go beyond the 5 minutes, we will include your entire statement in the record.

Please begin, Mr. Plesha. Thank you.

STATEMENT OF JOSEPH T. PLESHA, GENERAL COUNSEL, TRIDENT SEAFOODS CORPORATION

Mr. PLESHA. Thank you, Madam Chair. My name is Joe Plesha and on behalf of Trident Seafoods Corporation I want to thank you for the opportunity to testify on the IFQ Act of 2001.

Trident was founded in 1973 and it has never once declared a dividend for its shareholders, instead reinvesting its earnings back into the seafood industry. Most of Trident's investments have been in seafood processing and we now have over $300 million invested in shore-based processing plants located in the States of Oregon, Washington, and Alaska. These facilities have no other use besides seafood processing and under a harvester-only IFQ system this $300 million of investments would be expropriated from my company and transferred to IFQ quota shareholders.

Trident supports the statutory moratorium on IFQ's. We believe that the fisheries of the United States can be fairly managed under an open access system. Moreover, no IFQ program should be adopted without statutory guidelines or direct approval from Congress.

The IFQ issue is critical to processors in the Pacific Northwest and Alaska. Simply put, processors will go out of business under a harvester-only IFQ system. Trident's $300 million of investments in shore-based processing were made to be competitive in the open access fisheries of Alaska, Washington, and Oregon. If you eliminate the open access race to fish, you eliminate the need for investments in processing capacity that open access fisheries demanded.

If vessel owners are the only ones to receive IFQ's, then processors are forced to operate at only their variable cost of production. We could not meet our debt service over time, we could not engage in the product research and development necessary to remain competitive on the world market, and we could not maintain or improve our plants or equipment.

Harvester-only IFQ fisheries would lead to bankruptcy of the processing sector. I might add that vessel owners would suffer the same fate if only processors received ITQ's.

Therefore, if the moratorium on IFQ's is not extended by Congress, we respectfully request that processors be treated equally with vessel owners. I know of at least three options to treat processors equally with vessel owners under a quota-based system.

The first is the American Fisheries Act style cooperatives. Under the American Fisheries Act cooperative structure, a group of vessel owners have harvesting quota set aside for their use. A vessel can

remain in open access, but if a vessel owner decides to join a cooperative it must agree to deliver its harvest of pollack to the processor to whom it historically sold its catch. The American Fisheries Act structure has been remarkably successful and Senator Stevens and Senator Gorton, its primary authors, should be applauded for this groundbreaking legislation.

Under the American Fisheries Act both sectors, vessel owners and processors, have remained viable during a time of massive upheaval caused by endangered Stellar sea lion regulations and eroding world markets for pollack.

The second option to treat vessel owners and processors equally would be what has been called the two-pie quota system. The two-pie system would allocate a harvesting quota based on a vessel's catch history and processing quota based on a plant's processing history. All fish that are harvested must be caught by an entity holding the requisite amount of harvesting quota and all fish that are landed must be purchased by a plant holding processing quota.

The processing and harvesting sectors would both likely consolidate when the open access fishery is rationalized. Under the two-pie system, owners of processing capacity that leave the industry would receive compensation for leaving through the sale of processing quota just like vessel owners what leave the fishery would be compensated by the selling of harvesting quota.

A final option to treat both vessel owners and processors equally would be to simply allocate 50 percent of the available quota created by the IFQ system to each. That way, each sector would receive valuable quota in exchange for the impact that IFQ's have on the value of their existing investments.

In conclusion, Trident supports the IFQ moratorium being extended, but if Congress decides to authorize IFQ's we believe that it would not intend to punish those of us who have invested in processing by transferring the value of our investments to those who have invested in vessels. To make sure this expropriation does not occur, we request express and unambiguous statutory language requiring that vessel owners and processors be treated equally in the applications of privileges under a quota-based management system.

Thank you.

[The prepared statement of Mr. Plesha follows:]

PREPARED STATEMENT OF JOSEPH T. PLESHA, GENERAL COUNSEL, TRIDENT SEAFOODS CORPORATION

Introduction

My name is Joe Plesha and on behalf of Trident Seafoods Corporation I want to thank you for the opportunity to testify on S. 637, the IFQ Act of 2001.

Trident was founded in 1973 by its president, Chuck Bundrant. Trident has never declared a dividend for its shareholders, instead reinvesting its earnings back in the seafood industry. Most of Trident's investments have been in seafood processing and we now have ten shorebased processing plants that provide markets for fishing vessels. Our shorebased plants are located in the states of Oregon, Washington and Alaska. In addition to these shorebased facilities, Trident owns floating processing vessels, catcher/processing vessels, fishing vessels and secondary processing facilities.

The Subcommittee has heard about the potential benefits of Individual Fishing Quota ("IFQ") fishery management. I would like to talk about the enormous impact that adoption of an IFQ program has on the value of fishing vessels and primary processing plants. If IFQ programs are authorized by Congress, I respectfully re-

quest the Magnuson-Stevens Act be amended to require that owners of processing plants be allocated privileges in the IFQ fishery on an absolutely equal basis with vessel owners.

The reasons for allocating privileges in an IFQ fishery to those with processing history are the same as the reasons for allocating privileges in an IFQ fishery to vessels with catch history.

Under open access there have been investments in both the harvesting and primary processing of fishery resources. In a typical open access fishery, both sectors have more capacity than is necessary to efficiently harvest and process the resource (otherwise the fishery would not be considered "overcapitalized" and there would be no need for the fishery to be rationalized). When the fishery is rationalized through an IFQ system, that "excess" capacity in vessels and processing plants becomes unnecessary. The IFQ system therefore results in de-capitalization of both the harvesting and processing sectors.

For example, in talking with crab fishing vessel owners that operate in Alaska, they tell me that if the Bering Sea opilio fishery were rationalized, there would be a need for less than fifty fishing vessels (not the 250 or more that currently harvest crab) and likewise, only one-fifth of the current processing power that is in the Bering Sea would be required.

Rationalizing an open access fishery through an IFQ system has dramatic impacts on the value of existing investments made in both fishing vessels and primary processing plants.

Gardner Brown, a professor of economics at the University of Washington noted that processors "can lose with the introduction of an IFQ system. No longer is there a race to harvest a fishery-wide quota. Harvest rates fall which creates excess demand for fish by processors." [1]

In the North Pacific off Alaska, we have learned from the Community Development Quota ("CDQ") program [2] and the Halibut/Sablefish IFQ program that most of the value of existing investments in both fishing vessels and processing plants is transferred to quota share holders when an IFQ system is implemented.

Under an IFQ program, vessels will harvest fish for a price that covers only their variable costs because there are far more boats than are necessary to harvest the rationalized fishery. For example, when the CDQ program was implemented for pollock off Alaska, Trident contracted with the Aleutian/Pribilof Island Community Development Association to use CDQ quota. Fishing vessels that had received over ten cents a pound for their pollock harvest during the open access fishery willingly fished the CDQ pollock quota for four and a half cents per pound, a price which covered only the fishing vessels' variable costs (i.e., the cost of fuel, groceries and crew). The vessel owner made no return on the capital invested in the vessel and thus the value of the vessel itself was transferred to the owners of the quota.

Existing investments in primary processing plants are likewise transferred to quota share holders when an open access fishery is rationalized through IFQs. Like vessels, processing plants will process fish at a price that only covers their variable costs because there is more processing capacity than is necessary to process the rationalized fishery. When Trident bid on the right to use CDQ quota, for example, we paid the amount for the quota that we thought would allow for us to cover only our variable cost of production. The over one hundred million dollar capital investment that Trident had made in our plant was, in essence, transferred to quota share holders.

The fishery resources in the United States' Exclusive Economic Zone belong to the public. The only reason for allocating quota shares under an IFQ system to vessel owners (instead of the government auctioning quota shares so that the general public receives the economic benefit from the resource it owns) is to compensate those vessel owners for the devaluation of their existing investments caused by adoption of the IFQ system. The exact same rationale applies to primary processors.

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[1] There have been a number of articles published in academic journals discussing the economic impact of IFQ programs on owners of vessels and primary processing plants. Among these articles are, G. Brown, "Renewable Natural Resource Management and Use without Markets", *Journal of Economic Literature*, Vol. XXXVIII (Dec. 2000) pp. 875–914 and S. Matulich, R. Mittehammer and C. Reberte, "Toward a More Complete Model of Individual Transferable Fishing Quotas; Implications of Incorporating the Processing Sector", *Journal of Environmental Economics and Management*, Vol. 31 (1996) pp.112–128.

[2] The Community Development Quota program is an IFQ system where the rights to the fishery were allocated to coastal communities in Alaska.

The reason processors fear IFQs is that if a fishery is rationalized and they do not receive privileges in the fishery, the value of their investments will be taken away from them.

The movement from an open access to an IFQ fishery should not take the value of existing investments in processing plants and transfer that value to vessel-owning quota share holders. Nor should rationalization allow for only vessel owners to receive all of the economic benefits from the fishery. In the Pacific Northwest and Alaska processors that have invested over a billion dollars in these fisheries fear the possibility of "harvester only" IFQ systems because such a system will take the value of their investments away from them.

Fishing vessel owners who want to exclude processors under an IFQ system merely want to change the existing bargaining position between harvesters and processors with the adoption of the IFQ program. But fishing vessel owners who support "harvester only" IFQ systems would be strongly opposed to an IFQ system that required all quota shares be auctioned by the federal government to the highest bidder or some other IFQ system under which they would not receive IFQ privileges.

Except for the American Fisheries Act, IFQ-style fishery management plans in the United States have allocated privileges exclusively to vessel owners and, in the case of the North Pacific's CDQ program, coastal communities. Those who have invested in seafood processing are at serious risk unless Congress adopts IFQ guidelines that require owners of harvesting vessels and primary processing facilities to be treated identically in the adoption of any future IFQ system.

Harvesters and processors should both receive economic benefits from an IFQ fishery.

There are at least three methods to maintain the existing balance between the harvesters and processors under an IFQ fishery. One way would be to simply allocate IFQ quota share privileges 50/50 between harvesters and processors; a second way would be to create what has been called a "two-pie" harvester/processor quota system; and a third way would be to require American Fishery Act-style cooperatives that include both harvesters and processors.

The "two-pie" harvester/processor quota system would allow vessels owners to receive allocations of their catch history through an IFQ quota system. Similarly, processors would receive allocations of their processing history through a processor quota system. All fish that are harvested must be caught by an entity holding the requisite amount of harvesting quota. All fish that are landed must be purchased by an entity holding the requisite amount of processing quota. The quotas would be theoretically transferable. If fishing vessel owner "Arctic Fishing Corp." is so much more efficient that it can afford to pay vessel owner "Bering Fishing Corp." more for "Bering Fishing Corp.'s" quota than it makes harvesting its own quota, then "Bering Fishing Corp." is likely to sell or lease its quota to "Arctic Fishing Corporation's" more efficient operation. The same is true for processors. IFQ systems have been called an "industry-funded buyback program." Vessel owners who are perhaps less efficient can sell their quota and be compensated for voluntarily leaving the fishery. The processing sector, like the harvesting sector, will consolidate when an open access fishery is rationalized. Under a "two-pie" system, however, owners of processing capacity that leave the industry will receive compensation for leaving through the sale of processing quota.

The American Fisheries Act was the first attempt in a federally managed fishery to include both harvesters and shorebased processors in the benefits of a rationalized fishery. The Act accomplished this goal by allowing vessels to form cooperatives among themselves and have their historical catch allocated to the cooperatives similar to allocations of quota shares to vessels in an IFQ program. If a vessel owner decides to join a cooperative, it must agree to deliver its harvest of pollock to the processor to whom it has historically delivered its catch. In addition, there is a limited entry system placed on both the number of pollock harvesting vessels and pollock processing plants. The Act has been remarkably successful in allowing both harvesters and processors to benefit from the rationalized pollock fishery.

Conclusion

Trident has invested hundreds of millions of dollars into seafood processing facilities that operate in open access fisheries. Before authorizing adoption of any future IFQ programs, we urge the Subcommittee to provide statutory guidelines that require owners of processing facilities and harvesting vessels be treated identically in the allocation of privileges under any future IFQ system.

Senator SNOWE. Thank you very much, Mr. Plesha.

Ms. Williams.

STATEMENT OF KAY WILLIAMS, CHAIRMAN, GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

Ms. WILLIAMS. Thank you, Madam Chairman. My name is Kay Williams and I greatly appreciate the opportunity to testify on Senate Bill 637, the IFQ Act of 2001, and to provide you with written comments on the council's recommendations for amendments to the Magnuson–Stevens Act.

First let me acquaint you with my background. My family has been in the commercial reef fish fishery for years. I became involved with the council process in 1992. I was the spokesperson for Save America's Seafood Industry, a commercial organization based in Mississippi which had members in all the five Gulf Coastal States. I was a member of several advisory panels to the Gulf Council. I was appointed to the Gulf Council in 1997. I presently serve as Chairman of the council and as President of the Gulf and South Atlantic Fisheries Foundation.

Our council has not had the opportunity to review and comment on the provisions of the IFQ Act of 2001. We will take that action later this month, as will the council chairmen at their meeting at the end of May when they address reauthorization issues. Therefore I cannot speak for the council on your bill. But, as indicated in the appended written testimony, the council did support rescinding the Congressional moratorium on IFQ's and expressed the need for the council to have maximum flexibility in the design of ITQ systems, especially in setting the fees.

The comments I offer on your bill are my own, based on my experience in helping develop ITQ's and license limitation systems and my knowledge of the industry positions on some of these issues in the Gulf of Mexico.

First, I believe that the IFQ's should not expire in 5 years, but should be reviewed by the councils and should require a two-thirds referendum vote as to whether or not the plan should expire by the affected individual shareholders. I believe the industry would support the two-thirds double referendum vote in the bill.

A 50 percent income requirement from commercial fishing would bring some protection for the IFQ program as it would relate to shareholders.

I do not believe that the fishermen can afford to pay for the IFQ program, but could pay for the administrative cost of the paperwork perhaps. An example would be when the Gulf Council looked at IFQ's before on a three million pound TAC it was going to cost $2.1 million the first year and $1.7 million annually, and that was on a three million pound TAC, such as in the red snapper fishery. In the red snapper fishery they are now at 4.5 million. I have no idea what the cost to administer that program would be, but I just do not feel that the fishermen would be able to pay for the entire administration of this type program.

I believe the industry would support a cap on ownership and would support a use it or lose it provision. I believe that two-thirds of the industry will want to be able to sell, transfer, or lease their quota shares in the Gulf, the reason for this being is because they are right now in the red snapper fishery, they have a license limitation. They have a 2,000 pound endorsement, they have a 200 pound endorsement. So those endorsements can be sold, trans-

ferred, and leased. Many fishermen have went out and bought up additional license in the aspect of future ITQ's coming in order to increase their share. That is why I feel that, unless you do allow the transferability and the sale as far as it pertains in the Gulf of Mexico, we probably would not get a two-thirds vote.

An IFQ would in fact stop the derby fishery. But these men have already invested so much money into the licenses that they are under now, it would be extremely hard for them to accept something now that they can no longer transfer, sell, or lease. However, they are desperate.

The one most very important item in the entire bill in my opinion is the double referendum requiring a two-thirds vote. Very often the councils are not balanced. What comes out of the council is not necessarily what the fishermen support. As in the case of the Gulf of Mexico Fishery Management Council, we have four commercial representatives, we have seven recreational representatives, we have five State directors, and of course the regional administrator. So always what comes out of the council, like I said, is not what the fishermen want.

The last time the Gulf Council looked at an ITQ, even though there were advisory panels set up, input from the fishermen, by the time the council got through with the plan two-thirds of the fishermen no longer supported that ITQ. So in my opinion it is very important with the double referendum, and would ask that you at least retain that because that gives the fishermen some protection on what is done with their lives and how they go about doing that.

I have appended our written comments and I thank you for this opportunity to testify. I will be glad to answer any questions.

[The prepared statement of Ms. Williams follows:]

PREPARED STATEMENT OF KAY WILLIAMS, CHAIRMAN, GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

Madame Chairman and Members of the Committee, I greatly appreciate the opportunity to testify on the Senate Bill 637, IFQ Act of 2001, and to provide you with written comments on the Council's recommendations for Amendment to the Magnuson-Stevens Act.

First, let me acquaint you with my background. My family has been in the commercial reef fish fishery for years. I became involved in the Council process in 1992 as a spokesman for a Mississippi commercial fishing association. During that year, the Council conducted 3 sets of 10 workshops with the commercial red snapper industry to get their input on limited access for that fishery. Over the next three years, I participated as an Advisory Panel member in the development of an ITQ system for the commercial red snapper fishery. The ITQ system was implemented by federal rule in December 1995, and rescinded by emergency rule in 1996 when Congress was proposing the moratorium on IFQs in the Sustainable Fisheries Act. In 1997, I was appointed to the Council and I currently serve as President of the Gulf and South Atlantic Fisheries Foundation.

Our Council has not had the opportunity to review and comment on the provisions of the IFQ Act of 2001. We will take that action later this month, as will the Council Chairmen at their meeting at the end of May when they address re-authorization issues. Therefore, I cannot speak for the Council on your bill, but as indicated in the appended written testimony, the Council did support rescinding the Congressional moratorium on IFQs and expressed the need for the Councils to have maximum flexibility in the design of ITQ systems, especially the setting of fees.

The comments I offer you on your bill are my own, based on my experience in helping develop ITQs and license limitation systems, and my knowledge of the industry positions on some of these issues. One of the major problems our Council created by reverting back to a red snapper license limitation system was a derby fishery that adversely affected the price paid to fishermen and also vessel safety. Your

bill would allow us to address the problems created by the derby fishery. However, I do not believe we could get support from two-thirds of the fishermen for a system that does not allow IFQ shares to be sold, transferred, or leased. Our red snapper industry is under a license limitation system where the licenses can be sold, transferred, and leased.

I believe that our industry would support the bill's provisions preventing anyone from acquiring an excessive share and for revoking shares not used in 3 years of each 5-year period. I believe that the provision for the individual quotas to expire after 5 years will be of serious concern to our industry. Even though there is a provision that allows the Council to renew the quotas, that same provision also allows the Council to reallocate or reissue the quotas to other persons which would be of concern. Also of major concern is that a 5-year period is too short a time upon which to base good business decisions and venture the capital necessary to increase the efficiency of the fishing operation.

The structure of the IFQ in your bill removes the economic incentives for the industry to consolidate the shares, thereby reducing excess fishing capacity in the fisheries. This limits significantly its' use as a management tool. Perhaps the review panel established by the bill will subsequently propose allowing transfer, leasing, and sale.

I have appended our written comments and I thank you for this opportunity to testify. I will be glad to answer any questions.

SUMMARY OF THE GULF COUNCIL'S ACTIONS & ADMINISTRATIVE POLICY COMMITTEE ACTIONS
Mobile, AL, September 11 and 14, 2000
Biloxi, Mississippi, November 14–15, 2000

Documents Reviewed

Tab E, No. 3—Council 1999 position on Magnuson-Stevens Act re-authorization issues as appended to Mr. Swingle's testimony of July 29, 1999 before the Senate Subcommittee on Oceans and Fisheries.

Tab E, No. 4(a)—Amendments proposed by Senator Kerry on July 27, 2000.

Tab E, No. 4(b)—Summary of above Kerry Bill.

Tab E, No. 5—Senate staff working draft dated June 7, 2000, called the Snowe Bill in committee discussions. Changes by S. 2832 proposed by Senator Snowe were noted in review of the staff draft.

Tab E, No. 6—HR. 4046 called the Gilchrist Bill in committee discussion.

Note: The page numbers used in this text are for copies of the bills inserted into the text of the Magnuson-Stevens Act.

The Committee proceeded by addressing the Council's previous recommendations and the new issues in the handout to determine if members wished to change the previous recommendations or to support or oppose any of the new issues. In the process, the Committee editorially revised the Council's previous position statement on the issues in the following document, when appropriate.

1) *Rescinding the Congressional Prohibitions on IFQs (or ITQs)*

Currently Section 303(d)(1) of MSA prohibits a Council from submitting or the Secretary approving an IFQ system before October 1, 2000. Section 407(b) prohibits the Gulf Council from undertaking or continuing the preparation of a red snapper individual fishing quota (IFQ) or any system that provides for the consolidation of permits to create a trip limit before October 1, 2000. The Council supports rescinding those provisions. The Council also opposes extending the moratorium on IFQs.

The Council reiterated its stand on IFQs (as above) but should Congress extend the moratorium the Council requests that Congress provide language that would allow the Council to develop a profile during the moratorium, containing the information necessary for the industry to make a decision on whether ITQs were appropriate, when the referendum is conducted. The Committee did review the exclusive quota-based programs proposed by the Kerry Bill, but did not endorse it.

2. *Regional Flexibility in Designing IFQ Systems*

The Council, while philosophically opposed to fees that are not regional in nature and dedicated by the Councils, is concerned over the ability of the overcapitalized fleets to pay fees. However, they do support the National Academy of Science (NAS) recommendation that Congressional action allow the maximum flexibility to the Councils in designing IFQ systems and allowing flexibility in setting the fees to be

charged for initial allocations, first sale and leasing of IFQs [MSA Sections 303(d)(2–5) and 304(d)(2)].

The Council recommended retaining this position and noted the Kerry Bill did not provide for regional accounts for fees.

3. *Coordinated Review and Approval of Plan Amendments and Regulations*

The Sustainable Fisheries Act (SFA) amended Sections 304(a) and (b) of the MSA to create separate sections for review and approval of plans and for review and approval of regulations. This has resulted in the approval process for these two actions proceeding in different time periods, rather than concurrently as before the SFA Amendment, which also deleted the 304(a) provision allowing disapproval or partial disapproval of the amendment within the first 15 days. The Council and the Timely Review Panel recommend these sections be modified to include the original language allowing concurrent approval actions for plan amendments and regulations and providing for the initial 15-day disapproval process.

Both Senate bills had identical language to implement this Council recommendation. Therefore, the Council took no action.

4. *Regulating Activities That Adversely Affect EFH*

The Council recommends that Section 303(b) of MSA be amended to provide authority to Councils to regulate activities by individuals or vessels that adversely impact fisheries or essential fish habitat (EFH). One of the most damaging activities to such habitat is anchoring of any vessels near habitat areas of particular concern (HAPC) or other EFH (e.g., coral reefs, etc.). When these ships swing on the chain deployed for anchoring in 100 feet, 20 to 70 acres of bottom may be plowed up by the chain dragging over the bottom. Non-consumptive diving has been shown to have an adverse cummulative affect on coral reef complexes; especially as levels of diving participation increase. Regulation of these types of activity should be allowed.

The Council's position on this issue was modified as above, (i.e., adding non-consumptive diving example). The Council noted that the Kerry Bill added 303 (b)(12) allowing regulation of vessel activity in coral or other sensitive habitats.

5. *Bycatch*

The MSA, under Section 405, Incidental Harvest Research, provided for conclusion of a program to (1) assess the impact on fishery resources of incidental harvest by the shrimp trawl fishery of the Gulf and South Atlantic, and (2) development of technological devices or other changes to fishing operations necessary to minimize incidental mortality of bycatch in the course of shrimp trawl activity, etc. Because this program has been the principal vehicle under which research and data collection has been carried out, the Council recommends that this program be extended and funded.

The Council's position on this issue was modified as above.

6. *Gulf of Mexico Red Snapper Research (Section 407)*

The research provided for has been completed. This section also provides, in Subsection (c), that a referendum be conducted by the National Marine Fisheries Service (NMFS) of persons holding commercial red snapper licenses, to determine if a majority support proceeding with an IFQ program and in Subsection (d) makes the recreational red snapper allocation a quota and provides for closure of the fishery when that quota is reached. The Council recommends that Subsection (c) for the referendum be retained and Subsection (d) be rescinded. The recreational fishery closure is having severe adverse economic impacts on the charter and head boat sectors. This year that fishery that began April 21 is projected to close on August 31. As the red snapper stock is being restored, the size of fish increases each year and the closure comes earlier each year, e.g., January 1 through November 27 in 1997 to January 1 through August 29 in 1999.

The Council's position on this issue was modified as above.

7. *Collection of Economic Data [Section 303(b)(7)]*

Situation: Language throughout the MSA specifies the collection of biological, economic, and socio-cultural data to meet specific objectives of the Act and for the fishery management councils to consider in their deliberations. However, Section 303(b)(7) specifically excludes the collection of economic data, and Section 402(a) precludes Councils from collecting proprietary or confidential commercial or financial information. However, NMFS should not be precluded from collecting such proprietary information so long as it is treated as confidential information under Section 402. Without this economic data, multi-disciplinary analysis of fishery management regulations is not possible, preventing NMFS/Councils from satisfying the re-

quirements of the Act and of the Regulatory Flexibility Act (RFA). Economic data are required to meet the requirements of RFA and other laws, yet MSA restricts the economic information that can be collected under the authority of the MSA.

Recommendation: Amend the Act to eliminate these MSA restrictions on the collection of economic data. Amending Section 303(b)(7) by removing "other than economic data" would allow NMFS to require fish processors who first receive fish that are subject to the plan to submit economic data.

Discussion: Removing this current restriction will strengthen the ability of NMFS to collect necessary data and eliminate the appearance of a contradiction in the law requiring economic analysis without allowing the collection of necessary data. NMFS and the Councils need data to be able to comply with RFA, and we should not be prohibited from requiring it.

Both Senate bills had identical language to implement this Council recommendation. Therefore, the Council took no action.

8. *Confidentiality of Information [Section 402(b)]*

Situation: Section 402 replaced and modified former Sections 303(d) and (e). The SFA replaced the word "statistics" with the word "information" expanded confidential protection from information submitted in compliance with the requirements of an FMP to information submitted in compliance with any requirement of the MSA, and broadened the exceptions to confidentiality to allow for disclosure in several new circumstances.

Recommendation: The following draft language clarifies the word "information" in 402(b)(1) and (2) by adding the same parenthetical used in (a), and deletes the provision regarding observer information. The revised section would read as follows (additions in bold):

(b) Confidentiality of Information.

"(1) Any information submitted to the Secretary by any person in compliance with any requirement under this Act and that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations shall not be disclosed, except:

a. to Federal employees and Council employees who are responsible for fishery management plan development and monitoring;
b. to State or Marine Fisheries Commission employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;
c. when required by court order;
d. when such information is used to verify catch under an individual fishing quota program; or
e. when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act."

The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement under this Act and that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (1)(E).

Both Senate bills had identical language to implement this Council recommendation. Therefore, the Council took no action.

9. *Observer Programs*

Reaffirm support to give discretionary authority to the Councils to establish fees to help fund observer programs. This authority would be the same as granted to the North Pacific Council under Section 313 for observers.

Mr. Swingle noted that the Kerry Bill had provisions for an observer program which allowed the Councils to develop the provisions of the program and set the fees. It also established an observer fund that provided for regional accounts, by fishery, and dedicated the funds to that fishery, as had been the case under Section

313 for the North Pacific Council. **The Council did not endorse the Kerry Bill provisions, but retained its position on the issue.**

10. *Congressional Funding of Observer Programs*

Situation: Currently, the Secretary is not authorized to collect fees from the fishing industry for funding of observer programs. Funding of observer programs has been through MSA or MMPA appropriations.

The lack of adequate appropriations to run observer programs has resulted in statistically inadequate observer programs that do not satisfy the monitoring requirements of the statutes. This is of particular concern with regard to observer requirements that are a requirement or condition of an ESA biological opinion or a condition of a take reduction plan or take exemption under the MMPA. In addition, funding is taken from extremely important recovery and rebuilding programs to pay for the observer requirements. Consequently, investigations into fishing practices or gear modification (or other areas that would actually prevent the lethal take from occurring or causing serious injury in the first place) cannot proceed.

Recommendation: If the MSA is not amended to authorize the Secretary to collect fees from the fishing industry, then those fisheries that are required to carry observers as a condition of biological opinion under ESA, or as a condition of a take exemption under the MMPA, should be funded through the Congressional appropriations directed towards fisheries management under the MSA.

It was noted that consistent with the Council's position the Kerry Bill would authorize $20 million annually to support federal observer programs. Therefore, the Council took no action.

11. *Defining Overfish and Overfishing [Section 3(29)]*

Currently, both overfished and overfishing are defined as a rate of fishing mortality that jeopardizes the capacity of a fishery to produce maximum sustainable yield (MSY) on a continuing basis. The Administration proposed redefining these to be consistent with NMFS' guidelines in the guidelines for National Standard 1.

The Council recommends that Congress define overfishing as harvest activities (i.e., rate of fishing mortality) that would result in too many fish being harvested and overfished as a level (i.e. minimum fishery biomass) resulting in too few fish left in the water.

12. *State Fishery Jurisdiction*

The Council supports language in the Act to establish the authority of the states to manage species harvested in the exclusive economic zone (EEZ) that occur in both the state territorial waters and the EEZ, in the absence of a council fishery management plan similar to the language specified for Alaska in the last amendment to the Act.

It was noted that Congress did not propose a change that established the state fisheries authority as suggested above. The Council took no further action.

13. *Enforcement*

The Council supports the implementation of cooperative state/federal enforcement programs patterned after the NMFS/South Carolina enforcement cooperative agreement. While it is not necessary to amend the Act to establish such programs it is consistent with the changes needed to enhance management under the Act to suggest to Congress that they consider establishing and funding such cooperative state/federal programs.

Both Senate bills had identical language to implement the Council recommendation for cooperative state/federal enforcement programs. Therefore, the Council took no action on that issue, but did recommend that Congress provide authorization for increased funding support for NMFS enforcement and for NOAA General Counsel's office to prosecute violations.

14. *Council Member Compensation*

The Act should specify that Council member compensation be based on the General Schedule that includes locality pay. This action would provide for a more equitable salary compensation. Salaries of members serving in Alaska, the Caribbean, and Western Pacific are adjusted by COLA. The salary of the federal members of the Councils includes locality pay. The DOC has issued a legal opinion that prohibits Council members in the continental U.S. from receiving locality pay; therefore, Congressional action is necessary.

The Council retained its position on this issue.

15. *Emergency Rule Vote of NMFS Regional Administrator on the Council*

Proposal: Modify the language of Section 305(c)(2)(A) as follows (new language bolded):

(A) The Secretary shall promulgate emergency regulations or interim measures under paragraph (1) to address the emergency or overfishing if the Council, by unanimous vote of the members, excluding the NMFS Regional Administrator, who are voting members, requests the taking of such action; and . . .

Currently, the NMFS RA is instructed to cast a negative vote even if he/she supports the emergency or interim action to preserve the Secretary's authority to reject the request. The Council believes that Congressional intent is being violated by that policy.

The Council retained its position on this issue.

16. *Disclosure of Financial Interest and Recusal*

Proposal: Modify the language of Section 302(j)(2) as follows (new language bolded):

(2) Each affected individual must disclose any financial interest held by—
(A) that individual;
(B) the spouse, minor child, or partner of that individual; and
(C) any organization (other than the Council) in which that individual is serving as an officer director, trustee, partner, or employee; in any harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery over which the Council concerned has jurisdiction,
(D) or any financial interest in essential fish habitat (EFH).

The Council feels an interest in EFH should be treated from an ethical point of view, the same as an interest in fishery operations, in determining whether a Council member should abstain from voting. The effect of this action would be to exclude the Council member who held interests in/or related to EFH from the provisions of Section 208 of title 18, SSC, which would prevent that person from voting on habitat protection issues. However, if he/she were able to file a disclosure notice under 302(j) of the MSA they could vote unless that action would substantially change the financial interests of the member. This action would put them on the same basis as a person having an interest in a commercial harvesting, processing, or marketing activity. A lot of the marshland in Louisiana is privately owned.

The Council's position on this issue was modified as above.

The Committee then reviewed the following issues first raised in the Gilchrist Bill Tab E, No. 6:

1. *Council Members Nominated by Governors*
Kerry Bill (Pages 40–41)—include consideration of members of conservation organizations [302(b)]
Snowe Bill—Silent

The Council supports the Snowe bill on this issue (i.e., no change).

2. *Bycatch Reduction*
Kerry Bill (Page 95)—Reduction Incentives; (Page 116)—Reporting and Task Forces
Snowe bill—No Change

The Council reviewed the bycatch reduction provisions in the Kerry Bill (page 95, 116) and felt uncomfortable with the provisions and, therefore, took no action.

3. *Fishery Ecosystem FMPs*

Kerry Bill (pages 95–96)—similar to Gilchrest except time periods
Snowe Bill (Page 105)—Development of One or More Pilot Ecosystem Plans

The Council recommends to Congress, that of the two Senate proposals for Fishery Ecosystem Plans, it supports the Snowe bill proposal, but reserves its position on whether Ecosystem Plans should be included as amendments to the Act. The Council takes this position because it has not had any information provided to it that demonstrates the Ecosystem Plans will provide a management regime superior to current FMPs, and because there are no NMFS guidelines upon which to base a decision on the complexity of such a plan. The plans could be as simple as concluding that our multi-species FMP for about 40 species of reef fish is an Ecosystem Plan, or as complex as requiring us to manage the other 150 species of finfish (most of which are small prey fish not harvested in the fishery), as well as all the invertebrates. We favor the Snowe bill provisions because they provide for a more gradual approach to evaluating the benefits or aspects of such an approach to fishery management.

The Committee then considered other important issues raised in the two Senate Bills as follows:

1. *Capacity Reduction* [303(e)]
Kerry Bill (Page 56); Also see [312(b)]—Page 87
Snowe Bill—No Change

The Council, after reviewing the provisions of the Kerry Bill took no action, pending a report by NMFS on this subject at the November Council meeting.

2. *Peer-Group Review*
Kerry Bill (Pages 97–98)—Establishes a Center for Review
Snowe Bill (Pages 46–47)—Uses SSC or Council Scientific Committees

After reviewing the provisions of both bills, the Council supports the current systems as proposed in the Snowe bill, with the realization the Council could, if they choose to, add other experts to the SSC/SAP/SEP review process on an ad-hoc basis.

3. *Public Notice* [302(i)] (Both the Same)
Kerry Bill (Page 46)—Also allows closed meetings to review research projects for cooperative research
Snowe Bill (Page 48)

Both Senate bills had identical language allowing the Council to notify the public of meetings "by any other means that will result in wide publicity" in addition to publishing a notice in the newspapers of seaports. Therefore, the Council supported that action.

4. *Cooperative Research* [408]—With industry/state/academic institutes
Kerry Bill (Pages 109–110)
Snowe Bill—(S.2832 page 9)

The Council supports the concept of Cooperative Research programs between the fishing industries, educational institutions, and state and federal agencies.

5. *Habitat Areas of Particular Concerns* [303(b)(7) and 305(b)]
Kerry Bill (Pages 50 and 65–66)
Snowe Bill (Page 7, 52, and 66–67)

Both Senate bills provided for HAPCs as the next step in describing areas of EFH critical to certain life history stages of each stock. The Council supports HAPCs as a subset of EFH that will be used to describe these critical areas.

6. *Regional Fishery Outreach Program* [317(a)(b)(c)]
Kerry Bill (Pages 96–97)
Snowe Bill—No Change

The Council reviewed the Regional Fishery Outreach Program provisions of the Kerry Bill (pages 96–97). They "wholeheartedly" support the outreach provision under paragraphs (a) and (b) of this section. *Note*: Subsequent paragraphs (c),(d), and (e) relate to peer-group reviews and were not supported.

The Committee deferred the other issues on the handout to a subsequent meeting. They did address two items of critical concern to Dr. Claverie. The first of these was a proposed policy on page 3 of the Snowe bill (Tab E, No. 5) which proposed that the Secretary of the Department of Commerce have *exclusive* authority for managing fishery resources. Dr. Claverie expressed concern that authority may supercede the Council authority. **Therefore, the Council objects to that provision.**

The other provision was on page 40 of the Gilchrist bill (Tab E, No 6), which would modify Section 301(b) to make the national standard guidelines have the full force and effect of law. **The Council opposes that change.**

Senator SNOWE. Thank you very much, Ms. Williams.
Mr. Giles.

STATEMENT OF DON GILES, PRESIDENT, ICICLE SEAFOODS, INC.

Mr. GILES. Thank you, Senator Snowe and Members of the Committee, for the opportunity to testify today.

Icicle Seafoods has been in business since 1965. We are an American-owned company and one of the largest seafood processing companies in Alaska. We have processing plants in Alaska, Washington, and Oregon.

I would like to preface my comments today by stating that we are not opposed to rationalization. There are many compelling reasons why various fisheries could be rationalized. Quota-based fisheries can provide many benefits to all the participants. The most common justification for rationalization is overcapitalization, too much catching capacity, too much processing capacity, chasing too few fish. This does not necessarily mean that there is a resource problem.

In Alaska we do not have a resource problem in most of our fisheries. We are lucky that we have some of the healthiest, well managed fisheries, both State and Federally managed fisheries. What we do have in some fisheries is too much capacity, both harvesting and processing. It is impossible to have an overcapitalized harvesting sector without having an overcapitalized processing sector. In most cases, especially in remote parts of Alaska, it is very unlikely that the processing sector was able to overcapitalize without community investment in ports, harbors, docks, water, power, and infrastructure. In other words, everybody got to the same position together, depending on each other.

If any fishery is to be rationalized, the benefits of rationalization should be shared and enjoyed by those with a vested stake in the fishery. The benefits of rationalization should not come at the expense of other stakeholders in the fishery, including fishermen, processors, and those dependent communities.

In Alaska we do have current rationalization programs that are in effect today, the halibut-black cod, the halibut-sablefish IFQ plan, and the American Fisheries Act pollack program. The halibut-sablefish program is going on its seventh year. The bottom line for the halibut-sablefish IFQ program is it has not worked for the processing sector. Not only has it not worked, it has been devastating to the processing sector. In the halibut-sablefish IFQ program, the harvesting sector was rationalized while the processing sector was not. All of our investment in those fisheries were immediately devalued once the IFQ's were implemented. 100 percent efficiencies, 100 percent of the economies of scale, 100 percent of the added value of the fisheries, went to the harvesting sector.

Unfortunately, the processing sector did not get the same benefits. You do not have to look very hard in Alaska to identify processors and communities that have been devastated by the halibut-sablefish IFQ program. A lot of the companies that were involved in the halibut-sablefish have not survived and it has continued spillover effects on the communities and other small boat fisheries in Alaska.

My testimony today is not to trash the halibut-sablefish IFQ program. I am not suggesting that program be revisited. In fact, too much quota has moved and too much money has changed hands to

try to change the program at this time. I would hope that we can learn a lesson from this program and not make the same mistakes in any future programs.

The other rationalization program we have in Alaska is the American Fisheries Act on pollack. This program is in its third year. With this program, both the harvesting and processing sectors were rationalized through cooperatives that allow both sectors the opportunity to enjoy the benefits of a rationalized fishery. This has resulted in reduction of vessels, longer season, increased yields, less wastage, less bycatch. These benefits have been enjoyed by both harvesters and processors.

The AFA-style cooperatives may or may not be practical in other fisheries. What is clear is that rationalization of both the harvesting and processing sectors does work and does not diminish the benefits to either the harvesters or the processing sector as long as both are rationalized.

In closing, I am not sure that one program will work for every fishery. As a matter of fact, I am certain that that is not the case. Different regions, different fisheries, have different issues and challenges that may well dictate different solutions. Fortunately, you do not have to deal with each fishery. That is the job of the fishery councils.

If the IFQ moratorium is to be lifted, the fishery councils will need very clear direction from Congress on how the proceed. I would encourage you to continue to work on legislation that will provide equal benefits to both the harvesting and the processing sectors and direct the fishery councils to ensure that any future rationalization program provides both the harvesting and the processing sectors equal opportunity to protect their investments and share in any additional economic value resulting from rationalization.

Unless future rationalization programs provide equal benefits to both the harvesters and the processors, we would recommend status quo and extension of the IFQ moratorium.

Thank you.

[The prepared statement of Mr. Giles follows:]

PREPARED STATEMENT OF DON GILES, PRESIDENT, ICICLE SEAFOODS, INC.

My name is Don Giles and I am President and CEO of Icicle Seafoods, Inc. Thank you for the opportunity to testify on S.637, the Individual Fishing Quota Act of 2001.

Icicle Seafoods is an Alaska corporation founded in 1965. We started with a single salmon cannery in Petersburg, Alaska and have expanded over the years with multiple locations throughout Alaska that process salmon, crab, herring, halibut, sablefish, cod and pollock. We have processing operations throughout Alaska, including Petersburg, Seward, Homer, Dutch Harbor and St. Paul. In addition, we operate 5 floating processing vessels that process fish in various remote parts of Alaska. In addition to Alaska, we have two plants in the State of Washington and jointly own a canned salmon labeling warehouse in Astoria, Oregon. Although we do own a small number of catcher vessels, over 85 percent of our business is a result of purchasing fish from independent fishermen throughout Alaska.

I would like to preface my comments by stating that we are not opposed to rationalization. There are certainly many compelling reasons why various fisheries could be rationalized. Quota based fisheries can provide many benefits to any particular fishery, however those benefits should be enjoyed by all participants in the fishery including fishermen, processors and those communities dependent on the particular fishery. The most common justification to rationalize any fishery is a result of overcapitalization. It is impossible to have an overcapitalized fishing fleet unless the

processing sector overcapitalized with the fishing fleet in that particular fishery. It is very unlikely, especially in remote parts of Alaska, that the processing sector was able to overcapitalize without community investment in ports, docks, harbors and infrastructure. In other words, everyone got to the same place totally dependent on each other. If the fishery is to be rationalized whether it is with IFQs, cooperatives or any other method, the benefits of the rationalization should be enjoyed by everyone that has a vested stake in the fishery.

In Alaska, we do have an IFQ program for halibut and sablefish in place that is going on its 7th year. While my comments today are on why that program is not working for the processing sector and why any new programs should not be similar to the existing halibut/sablefish IFQ program, I am not suggesting that it should be revisited. In fact, too much quota and money has already changed hands to reasonably try to change that program now. However, I hope my comments today will help avoid making the same mistakes when future programs are contemplated.

In order to give you a clear picture of the current halibut/sablefish IFQ program, it is appropriate to give a brief history of the fishery and how we got to where we are today. Although the program was instituted for both halibut and sablefish, the development of each fishery was different.

The Halibut Fishery

The halibut fishery, as recently as the mid 1970's, was a long, drawn out fishery that was mostly fished in Alaska by both American and Canadian fishermen. Those fishermen basically fished throughout the spring, summer, and early fall. They had an informal system where for every day they fished they would lay-up for half a day to help spread the season out. In other words, if they made a 14-day trip, they would tie up for 7 days. In those days our company was the major buyer of halibut in Alaska, some years purchasing upwards of 50 percent of the catch. The first expansion of our company was purchasing the Seward plant in order to provide a market in the Gulf of Alaska for our fishermen from Petersburg and Seattle that were having trouble selling fish in those days. In a few short years after a major expansion of freezers, ice making capacity, docks and cold storage, our Seward plant became the largest halibut buyer in the world.

With the rapid expansion of the small boat salmon fleets throughout Alaska many new smaller local Alaskan fishermen began to fish halibut. Eventually, the Canadian fishermen were kicked out of Alaskan waters and the halibut seasons became increasingly shorter. In order to accommodate this growing number of fishermen, we continued to expand our capacity including purchasing a plant in Homer, Alaska, and building a larger freezer and cold storage facility. Eventually the seasons were measured in a few short 24 or 48-hour openings. We were still the largest buyer of halibut during this period as millions of pounds of fish had to be handled in a few short days. Since we grew with the fleet, we maintained our market share. During the last few years of the pre-IFQ fishery, we were even supplying our fishing fleets with tenders so they could fish in some of the remote areas of Alaska and deliver their fish to larger vessels that would safely return the product to port. This allowed small vessels to harvest fish in the best areas that otherwise would not have been available to them.

The Sablefish Fishery

Although it resulted in a similar situation as halibut, the sablefish fishery had a totally different history. Back in the mid 1970's, Icicle was purchasing 70 percent–80 percent of the U.S.-caught Alaskan sablefish. Although it was a very high percentage, the vast majority of the sablefish harvested in Alaska during this period was still being caught by foreign fishing fleets. This was a very trying and difficult time for both our fishermen and ourselves as it was difficult to get a reasonable price for our product since it was primarily a Japanese market and they were securing most of their product needs from their directed fishing efforts in Alaska. In the early 1980's, Icicle Seafoods and other companies, along with fishermen, petitioned the North Pacific Fishery Management Council (NPFMC) to eliminate the directed foreign fishing in order to allow U.S. fishermen and processors to access 100 percent of this fishery. Although most fishermen were supportive of this effort, there were some that proposed to let the U.S. fishermen harvest the fish but sell directly to foreign motherships. Their concern was that the Alaskan processing sector did not have the intent to buy, the capacity to process, and the access to the market that the foreign companies had. During years of debate, the NPFMC prodded the U.S processing side to develop the capacity to process, and the necessary infrastructure needed for 100 percent U.S. utilization. In 1984, the NPFMC told fishermen and processors that they would give them until September of that year to catch and process the quota or it would revert to the foreign fleets as it had been for decades.

That year, 100 percent of the fish were taken by July and the market prices increased dramatically, providing a new, profitable and viable fishery for both fishermen and Alaskan processors.

Once Americanized like halibut, many new participants in both the fishing and processing side entered the fishery. Seasons that once lasted 3 or 4 months began to last only 2 or 3 weeks. Again, the capacity we invested to prosecute the fishery served us well. In addition to our strategically located shore plants in the Gulf of Alaska, we invested in processing equipment and ice making capacity on our floating processors located in remote parts of Alaska providing markets for our fishermen and accessing fish we and our fishermen otherwise would not have had access to. As new Alaskan fishermen entered the fishery and as seasons became shorter, we continued to work to make both ourselves and those fishermen working with us more efficient. We modified our operation and began to allow fishermen to deliver whole, refrigerated seawater fish. This allowed fishermen, who once had to dress all the sablefish on the vessel, to become more efficient in their fishing operation as we took over the duties of dressing their product. A lot of the traditional vessels continued to dress fish, but delivering round, refrigerated fish became more common.

Current Halibut/Sablefish Program

Although not quite on similar courses, both the halibut and sablefish fisheries got into the same situation, which resulted in the current IFQ program we have today. Once the IFQ program was put in place, 100 percent of the efficiencies, economies of scale, and added value of the fishery was given to the harvesting sector. All of our investment that not only allowed us to maintain and even grow our business, but also allowed our fishing fleet to build good catch history that resulted in IFQs, became irrelevant and was immediately devalued. Fishermen, once awarded IFQs, were immediately able to consolidate and spread their fishing over 9 months. Those that wanted out, sold. Those that wanted more, bought. It was and is still today a happy story for those fishermen that were awarded IFQs, whether they still fish or left the fishery.

Today the quality of fish being delivered is far superior to the pre-IFQ fishery. The added value of the catch in the market is a lot higher. Unfortunately, 100 percent of that value has gone to the harvesting sector. The processing sector, by being left out of the rationalization process, was left with assets that are no longer needed. The choice for the processing sector was very clear, either continue to try to survive with assets that are not conducive to a controlled IFQ fishery or exit. That is exactly what has happened. Although we have been able to survive only because we were diversified in other fisheries and other areas, our business in the locations that were dependent on the halibut and sablefish fisheries has deteriorated. This is not only a problem for us, but it's a problem for the fishermen that fish other fisheries in those areas. Their fisheries now have to carry 100 percent of the burden on assets that were once getting reasonable contribution from halibut and sablefish. Our gross profit margin on halibut and sablefish during the first 6 years of the IFQ program is $20,000,000 less than it was the 6 years previous to the IFQ program. Not only are we feeling the pain, but every non-IFQ fishermen that delivers other product to these facilities now has to carry a bigger burden of the costs and overhead of these facilities.

As tough as it has been, we are one of the fortunate processors as we have been able to survive. Many took the second option, which was to just quit with no compensation for their investments. Some will say that's just too bad, but when they left they also left many non-IFQ fishermen without markets and many communities without a viable processing sector. Many in Alaska feel that one of our biggest challenges is dealing with our salmon business with the worldwide competition of farmed fish. That very well could be the case, but as one of the largest salmon processors in Alaska, I can assure you our biggest challenge has been adapting to the realities of the halibut/sablefish IFQs and the economic affect that has had on our salmon business. Not only is our salmon industry (fishermen, processors and dependent communities) fighting the challenges of the world farm fish explosion, but we are having to jointly foot the bill for the lost opportunities in the halibut and sablefish business.

Although there are some communities that have benefited from the IFQ program because of their close proximity to good air freight service to access the fresh halibut market, there are just as many communities that also lost out and no longer have a viable seafood industry resulting in economic hardships to not only the community but the other non-IFQ fishermen that try to operate out of those communities.

It is too late and not practical to change the existing halibut/sablefish program; however, we need to learn from it and make sure that any future programs allow

all the stakeholders (fishermen, processors and dependent communities) to enjoy the benefits of a rationalized fishery. The benefits should be enjoyed by all and not come at the expense of some.

Rationalization Benefits to the Quota Holders

Rationalization of overcapitalized fisheries provides benefits to the participants who receive IFQs and to the nation. Many fisheries in Alaska are overcapitalized, resulting in efficiency losses to the industry. In those fisheries, too many boats are chasing the fish, excess processing facilities are being operated, and communities have invested in more infrastructure than is needed. Most fisheries in Alaska are open access fisheries, with a race for fish being the primary factor in determining the structure of and investment in the industry.

In an open access fishery, more and more boats are added to the fleet in a hunt for profits, resulting in shorter seasons. When the influx of new boats stops, the fleet will upgrade engines for more power, use larger nets or set more pots and longlines, and increase their hold capacity as they catch and land fish more quickly. In the processing sector, more facilities are needed to process the fish as the catch is landed more quickly and in a shorter period of time. Processors upgrade their facilities with more processing lines, increased freezing capacity, and larger cold storages. Finally, communities and support industries upgrade the infrastructure which supports the fishing industry, building more dock space, providing more housing, and increasing the capacity of utilities such as water, electricity, and sewage disposal. The result is a fishing industry that can catch, process, and distribute the fish and fish products in a shorter period of time, leaving all of the capital facilities idle for many months. The Bering Sea pollock fishery, of which I will speak more in a moment, began as a ten-month fishery in 1991, decreased to a three to four-month fishery in the mid–1990's, and after rationalization by the American Fisheries Act (AFA), increased to a six-month fishery in 2000.

For the fishermen in the halibut and sablefish fisheries in Alaska, rationalization through the IFQ system provided each quota holder with a broad range of economic options: (1) a marginal fisherman could decide to sell his quota to obtain a return on his investment and retire from the fishery; (2) a fisherman who owned multiple boats could consolidate his quota onto a smaller number of boats and increase his efficiency, resulting in increased economic return; or, (3) a fisherman could use his quota to operate while avoiding bad weather, to catch fish in response to market demand, and to operate his boat at the highest level of efficiency (crew size, fishing grounds choices, fuel utilization, etc.).

Rationalization of an overcapitalized fishery provides increased economic value to the quota holders above the economic return from the open access fishery. The nation benefits from the productivity gains of the industry and from markets with higher quality products and greater availability of fish products.

Benefits of Processor Rationalization

An ITQ system with all IFQs going to the fishermen provides no benefits to the processors that supported those harvesters in the open access fishery. The processors receive none of the additional economic value resulting from rationalization of the harvesting sector, and will lose their capital investment in the excess facilities that were needed to support the open access fishery. Processors will have only negative options available: (1) retire from the fishery and write off the capital investment; or (2) continue to operate at a lower level of facility utilization and smaller margins.

Rationalization of the processing sector through processor quotas, processor-harvester cooperatives, or some other system will give to the processors the same broad set of economic options available to the rationalized harvesters: (1) a marginal processor could decide to retire from the fishery, sell his quota to another processor, and obtain some return on his capital investment; (2) a processor could consolidate facilities to make more efficient use of his equipment while cutting costs; and, (3) a processor can continue to operate, but with greater efficiency through decreased costs resulting from longer seasons and more predictable supply of fish.

Rationalization of the processing sector does not change the economic options for the fishermen. They can still exit the fishery, consolidate on fewer boats, or operate with better efficiency and safety. The only difference resulting from rationalizing both the harvesting and processing sectors is that the additional economic value from the fishery will be shared by the two sectors. The processing sector in Alaska has made significant investments in each fishery, as has the harvesting sector. Both sectors should receive benefits from those investments when a fishery is rationalized.

Icicle Seafoods supports the rationalization in many Alaskan fisheries provided that the additional economic benefits are shared equitably by all sectors. Icicle felt strongly enough about the benefits of rationalization to buy its way into the AFA pollock processing and harvesting sector. In late 1999, we purchased the P/V NORTHERN VICTOR, an AFA pollock processor, and five AFA pollock trawlers. In the last fifteen months, we have consolidated our harvesting fleet from five vessels to four, resulting in decreased costs for Icicle as the boat owner, and increased skipper and crew shares for those working on the trawlers. In addition, because the race for fish has ended, the trawlers can search longer to find the larger pollock, which are ideal for our production of pollock fillets. On the Northern Victor, we have slowed our daily processing rate, resulting in a higher quality product and increased production of some products with strong market demand. Finally, we have been able to respond positively to the need to change the nature of the pollock fishery to protect Steller sea lions. The AFA cooperative fishing style has lengthened the seasons, decreased daily catches overall in the fishery, and made it possible to fish away from sea lion rookeries and haulouts.

In conclusion, I encourage you to continue to work on legislation that will provide the additional economic benefits from rationalization of overcapitalized fisheries while ensuring that the opportunity to share in that additional economic value is available to processors as well as harvesters. Unless future rationalization programs provide equal benefits to all sectors, we would prefer the status quo.

Senator SNOWE. Thank you, Mr. Giles.

Ms. Behnken.

STATEMENT OF LINDA BEHNKEN, DIRECTOR, ALASKA LONGLINE FISHERMEN'S ASSOCIATION

Ms. BEHNKEN. Thank you, Madam Chairman. Thank you for the opportunity to testify. As you said in your introduction, I am a longline fisherman, participating in both the halibut and sablefish fisheries as a deck hand and a vessel owner. I have served on the North Pacific Council for the past 9 years and also participated as an industry adviser during the NRC review of IFQ's. I am Acting Director of Alaska Longline Fishermen's Association and speaking today on behalf of ALFA's membership.

I would like to address my comments today to the importance of establishing both conservation and socioeconomic goals for future IFQ programs and to aspects of S. 637 that ALFA members consider particularly important.

IFQ's are a valuable tool for addressing overcapacity and resource impacts associated with too many fishermen chasing too few fish. IFQ's also have profound socioeconomic impacts in fishing communities. The Nation's fisheries and fishing communities will be well served by IFQ programs designed to meet explicit conservation goals while mitigating socioeconomic impacts.

Congress can assist in this process by requiring regional councils to clearly state conservation and socioeconomic goals for each IFQ program and requiring periodic performance reviews to ensure that long-term goals are met. From a conservation perspective, ALFA believes IFQ programs should be required to reduce bycatch, minimize habitat impacts, and be abundance-based. To mitigate socioeconomic impacts and ensure long-term conservation concerns are met, IFQ programs should provide an entry level accessible to community-based fishermen, maintain fleet diversity, require direct ownership of quota share by active fishermen, control vertical integration and excessive share, and control foreign ownership.

These goals and a performance review to ensure goals are met in the long term must be mandated by Congress to maintain the

health of the resource, independent fishermen, and fishing communities. My experience with IFQ programs indicates that over time pressure on IFQ programs builds to liberalize rules, allow more consolidation, absentee ownership, and measures to benefit major quota shareholders. These changes will come at the expense of active independent fishermen, fishing communities, and ultimately the resource.

By requiring councils to establish explicit goals, conduct performance reviews, and change use privileges if goals have not been met, Congress can ensure that both the resource and the fishing communities dependent on the resource are protected.

I would like now to make a few comments specific to S. 637. ALFA welcomes language included in the bill that speaks to minimizing impacts on coastal communities and providing a portion of the quota for entry level opportunities, small vessel owners, and crew members. We suggest that language also be included in the bill that establishes a minimum goal for quota share ownership by people actively participating in the fisheries as owner-operators, skippers, or crewmen. We believe this active participation by quota shareholders, people with direct investments in the resource, is necessary to achieve stewardship objectives as well as socio-economic objectives.

Finally, ALFA would like to applaud Senator Snowe for excluding processors from the list of eligible quota shareholders. I know you have heard testimony from processors highlighting the disastrous effects of the halibut IFQ program on their operations. We have heard the same testimony, but have seen no evidence to support their claims. In fact, the fishermen-owned cooperative in Sitka has fared very well under IFQ's. While some costs have increased, others have decreased. Of those that have increased, one of the major ones has been more full-time employees at a higher pay scale. These are community people who are earning a better wage under IFQ's.

That said, members recognize the importance of the processing sector to the industry and would support consideration of a one-time compensation to processors of stranded capital to the extent it has not already been depreciated or compensated through other tax benefits. ALFA would also support regional delivery requirements to protect processors investments and community employment, providing competitive markets are maintained.

Members cannot support either a two-pie or a one-pie IFQ system. A two-pie system would eliminate competitive markets, turning the clock back to pre-statehood days when processors controlled the fish stocks and fish runs were overfished. A one-pie system or any IFQ program that did not control vertical integration would eliminate independent fishermen, again to the detriment of the resource and the communities.

Processor shares would also undermine Americanization goals. The American Fisheries Act raised the U.S. ownership requirement for vessels to 75 percent. Certainly other U.S. fisheries should adopt this standard. Alaska's processing capacity is largely owned by foreign or multinational corporations. If processors are issued shares or allowed to purchase shares, the U.S. will lose ownership of America's fishery resources and the Americanization benefits of

the original Magnuson Act. I cannot imagine Congress would intend or allow this to happen.

In summary, IFQ's are a valuable tool for addressing resource problems and rationalizing fisheries. Because socioeconomic impacts can be profound, steps must be taken to address the concerns of fishermen and fishing communities. To ensure that IFQ programs protect the health of the resource and fishing communities, ALFA requests that Congress establish both conservation and socioeconomic goals for future IFQ programs and require program reviews to ensure long-term goals are met. We join with both the Marine Fish Conservation Network and the Alaska Marine Conservation Council in making this request.

Finally, ALFA supports language in S. 637 that requires measures to mitigate socioeconomic impacts on fishermen and fishing communities and excludes processors from the list of entities eligible to receive quota share.

Thank you for the opportunity to testify.

[The prepared statement of Ms. Behnken follows:]

PREPARED STATEMENT OF LINDA BEHNKEN, DIRECTOR, ALASKA LONGLINE FISHERMEN'S ASSOCIATION

Members of the Committee,

Thank you for the opportunity to testify, and for the attention of this Committee to reauthorization of the Magnuson-Stevens Act and the implementation of future Individual Fishing Quota (IFQ) programs.

By way of introduction, let me provide you with information on my background relative to this issue. I have been a commercial longline fisherman in Alaska since 1982. I have worked as a deckhand since '82, and, since 1991, also as the owner/operator of a small combination troller/longliner. I did not receive an initial allocation of quota shares, but have since purchased small amounts of both sablefish and halibut IFQs.

Since 1991, I have served as director of the Alaska Longline Fishermen's Association (ALFA) and, as such, played an active role in developing and promoting adoption of the Alaska halibut and sablefish IFQ program. In 1992, I was appointed to the North Pacific Fishery Management Council, and am completing my ninth year as a member of the Council. Through these various roles, I have had an opportunity to gain a range of perspectives on IFQs and their impacts on the resource, the industry, and the coastal communities of Alaska.

Establishing program goals

Implementation of any limited entry program, whether that program takes the form of licenses, cooperatives, or IFQs, will always be controversial. Those who perceive themselves to be winners under the new program will generally support the program; those who perceive themselves to be losers, or left-out will oppose it. I believe the responsibility of managers is to separate the rhetoric from the substance, to identify legitimate problems and to clearly articulate goals and long-term objectives.

That said, the socioeconomic impacts of IFQs on fishing communities are profound, and must be addressed. ALFA's, and therefore my, role in developing Alaska's halibut/sablefish program was to resolve resource problems associated with derby fishing while ensuring that socioeconomic safeguards relative to consolidation and corporate ownership were addressed through effective provisions. ALFA members helped the Council establish a vision for the fishery of the future that depended on characteristics essential to maintaining a healthy resource, a healthy industry and healthy communities. This vision included a diverse, owner-operated fleet (everything from skiffs to schooners, as we repeatedly stated) that delivered primarily fresh fish to coastal communities historically dependent on the fishery. ALFA insisted that the IFQ program include provision to limit consolidation, protect the small boat fleet, and provide an entry level affordable to people who lived in Alaska's coastal communities. We were proponents of the vessel size classes, the Block proposal, and the caps on quota consolidation. We opposed provisions that allowed leasing and absentee ownership, maintaining that the stewardship objectives attrib-

uted to quota share programs depend on direct involvement in the fisheries by those who made investments in the resource. While this final provision has been compromised to a far greater degree than ALFA members consider acceptable, all other provisions fundamental to our support for the program were adopted and implemented.

Lessons learned

Throughout the IFQ debates, regulators and some industry members objected that the socioeconomic caveats built into the sablefish/halibut program were overly restrictive, inflexible, and would cause the program to fail. Quite the opposite has proven to be the case. The restrictions have been barely adequate to meet program goals, and owner-on-board provisions requiring the quota share owner to be on board the vessel when shares are harvested have already been weakened. The message is clear: the provisions of IFQ programs will only be relaxed over time, they will never be tightened. The reasons are explained below.

When IFQ programs are formulated, all concerned parties are involved, voicing their needs and concerns. As time passes, those excluded from the program disappear, those hoping to buy quota some day have little leverage, and the pressure to change the program comes from quota share holders that are well vested, would like more flexibility, wish to accumulate more shares, and, in many cases, would like to sit on the beach in Hawaii while "share-croppers" harvest the fish for them. Without checks on the system, and some firm guidelines or standards from Congress requiring direct ownership and involvement in the fishery by quota share holders, affordable entry level opportunities, and continued access by coastal community residents, IFQ programs are likely to devolve away from initial goals.

Congress can safeguard against this process by establishing standards for all future IFQ programs, including both conservation and socioeconomic goals. To ensure standards continue to be met as IFQ programs mature, Congress can, and I believe should, require performance reviews and the opportunity to re-specify use privileges. This is one of the recommendations cited in Sharing the Fish, the report issued by the National Research Council (NRC) commissioned to review IFQs (p. 150). By setting such standards and calling for periodic review, Congress can ensure that the very legitimate concerns about corporate ownership and quota consolidation voiced by independent fishermen and fishing communities are addressed. I would urge this Committee to establish such guidelines, and to require program reviews to determine whether long-term objectives are being met. In establishing these standards, I would urge the Committee to rely heavily on the recommendations in Sharing the Fish. These recommendations, formulated by a diverse panel of fishery experts, reflect years of research, experience, public testimony and discussion.

Along the same lines, I would urge Congress to define "cooperatives" in the Magnuson-Stevens Act and to set similar standards for any future use of this management tool. As the Committee is no doubt aware, Alaska's pollock fishery is now harvested by pollock cooperatives that include harvesters, catcher processors, and processors. These cooperatives were formed without the guidance of Magnuson-Stevens Act directives and without public involvement. If Congress intends to allow Councils to consider the formation of cooperatives in other fisheries, guidelines comparable to those addressing future IFQ programs, including entry level provisions, accommodations for coastal communities, and performance reviews, need to be incorporated into the Magnuson-Stevens Act.

Senate Bill 637

I would like to offer a few comments specific to S. 637. ALFA welcomes language included in the Bill that speaks to minimizing impacts on coastal communities and providing a portion of the quota for entry-level opportunities, small vessel owners, and crew members. Whether or not quota is initially set aside for these entities, their needs must be addressed by IFQ programs. I would suggest language that also establishes a minimum goal for quota share ownership by people actively participating in the fisheries, as owner-operators, skippers or crew members. This direct involvement by quota share holders will ensure that stewardship goals are realized, excessive share caps are effective, foreign ownership is controlled, entry-level opportunities remain affordable and active fishermen continue to benefit from the program. Without such language, over time absentee ownership by corporations will become the rule—to the detriment of the resource, the fishing communities, and ultimately the Nation.

Finally, ALFA would like to applaud Senator Snowe for specifically excluding processors from the list of eligible quota share holders. I am sure you will hear testimony from processors highlighting the disastrous effects of halibut quota shares on their operations. I have heard the same testimony, as did the NRC Panel during

the Congressionally requested IFQ review. I have seen no evidence to support their claims. In fact, the fishermen-owned processing cooperative in Sitka has fared very well under the IFQ program, despite being off the road system. Some overhead costs have increased (the year-round labor force includes more people at higher wage rates than did the labor force hired to work during the fishing derbies) while others have gone down (e.g., overtime pay). Although ALFA recognizes the importance of protecting the investments of processors, members do not consider allocations to processors, either through a "two pie" or a "one pie" system, to be the appropriate means of protecting those investments. In fact, ALFA members remain convinced that processor quotas will eliminate competitive markets and independent fishermen, turning the clock back to days when processors controlled the fisheries and Alaska's salmon runs were severely over-fished.

In considering the issue of processor shares, I would again draw the Committee's attention to Sharing the Fish (pp. 154–155). The NRC Committee raised questions relative to vertical integration, foreign ownership, the existing balance between fishermen and processors, and the extent to which processors have already depreciated capacity or been compensated by the government through other tax benefits. I would urge the Committee to consider each of these questions, particularly the issue of foreign ownership.

The American Fisheries Act raised the U.S. ownership requirement for vessels operating in Alaska's pollock fishery waters to 75 percent. Certainly other U.S. fisheries should adopt this standard. While there are still a few processors in Alaska that are entirely U.S. owned (two of which have been invited to testify), they represent a frighteningly small minority. Alaska's processing capacity is largely owned by multi-national corporations, as I am sure you are aware. If quota shares are issued to processors, or processors are allowed to purchase shares, how will the U.S. retain ownership of America's fishery resources? Will we lose all the benefits of Americanization that began with the original Magnuson Act? I can not see how such a trend could be avoided, nor can I imagine Congress allowing such a trend to occur.

That said, ALFA's membership has always recognized the importance of the processing sector to the health of both the fishing industry and the coastal communities. Under the halibut/sablefish program, ALFA supported vessel classes that require shore-based processing of approximately 80 percent of the total catch; in other words, fishermen supported a measure that limited their ability to freeze, or process catch in order to provide some protection to the processing sector. We would support measures to compensate processors for stranded capital (a one-time expense) and would likewise support requirements for regional delivery patterns provided competitive markets are maintained. ALFA members believe these measures would address the legitimate concerns of processors without allowing processors to gain control of the fisheries. ALFA can not support processor shares or a program that does not limit vertical integration of processors into the harvesting sector.

Summary

IFQs are a valuable management tool for addressing resource problems and rationalizing fisheries. Because socioeconomic impacts can be profound, Congress must ensure that Councils address the concerns of fishermen and coastal communities. If properly designed, IFQ programs can promote stewardship, industry stability, and economic health in coastal communities. To ensure that these objectives guide the development of future programs, ALFA members urge Congress, through this Committee, to develop conservation and socioeconomic standards for future IFQ programs. Likewise members urge that Congress schedule performance reviews to ensure program goals are achieved, and require use privileges be changed if original goals are compromised. The socioeconomic standards should include quota share ownership by active fishermen (including vessel owners, skippers and crew), entry-level opportunities, sustained access by coastal community residents, and healthy, competitive markets. Although only touched on in this testimony, ALFA also supports conservation standards pertaining to bycatch reduction and habitat protection.

In closing, I would like to thank Senator Snowe for introducing S. 637, Senator Stevens for his long-term commitment to the Nation's fisheries, and all Members of this Committee for the opportunity to testify.

Respectfully,

Linda Behnken (executive director, ALFA)

Senator SNOWE. Well, I thank all of you for your outstanding testimony here today on a very complex—not to mention contentious—issue. It has been very helpful to hear the diverse points of view on the various elements of S. 637 and other issues as well. Obvi-

ously our challenge is going to be to reconcile these differences and hopefully be able to move forward.

Pat, let me just start with you. Obviously, you are the only one who represents the New England fisheries. As we know, there are strong objections to an IFQ program in New England. I think it would be safe to say that a majority of the commercial fishermen in New England are probably opposed to an IFQ program. Do you believe that the double referenda included in this legislation would be helpful to the fishermen in the event they are opposed to an IFQ? By requiring two-thirds approval and a referendum at the initiation of an IFQ program and then, of course, based on the completion of an IFQ program for approval, do you think that the referendum would help direct it in a way that more than the majority of the commercial fishermen would want in New England?

Mr. WHITE. Absolutely, Senator Snowe. One of the things that is going to maintain the fisheries in New England is biodiversity, and if we continue down the road of single species management we will not even be able to have votes in a process like this. So this double referenda I think is a good step.

We have already lost a lot of the fishermen, myself included, in many of those species because we did not have landings data in a certain window. But there are still enough left that I think you could get a good cross-section of what people's wishes are.

Senator SNOWE. So it would be helpful——

Mr. WHITE. Absolutely.

Senator SNOWE.—in that sense.

Why do you think that the fishermen in New England are opposed to an IFQ? Do you think it is because of the consolidation issue?

Mr. WHITE. I think consolidation is the principal issue. The whole social aspect of our communities in the State of Maine specifically are based on fishing. What we have seen around the world with a lot of the quota-based management programs is that a good percentage of the people have gone out of the fishery. I think as I said in my statement, we have made a lot of mistakes in fisheries management in New England, but we are still there. A lot of the fishermen are still fishing. The consolidation I think would be the downfall of our waterfronts and social structure.

Senator SNOWE. Mr. Plesha, I would like to have you address transferability. I gather the remainder of the panel has opinions as well—I know that Pat is opposed to the transferability element. Now, some have said that without having that type of provision, it would require constantly reestablishing the allocation of shares at some point.

Why do you think? I would like to hear each of the panelists comment on the transferability question, because obviously that is one of the most difficult areas that we are going to have to address in any kind of legislation.

Mr. PLESHA. I guess off the top of my head I would think that one of the benefits of a quota-based system is the economic efficiency that it would allow to develop, and that would be negatively impacted if you would not allow for the shares to be transferred and used in the most efficient manner. So I think you would get

social benefits in the sense that you would maintain the existing structure of the fleet, at the cost of perhaps some efficiencies.

Senator SNOWE. But why would it not concentrate the fisheries in the hands of a few ultimately? Is that not a legitimate concern?

Mr. PLESHA. No question, and if you allow full transferability in an open access fishery the number of participants will greatly decrease.

Senator SNOWE. Ms. Williams, I would like to hear your comments. Should it be up to the councils to make the decision as to whether or not it should be allowed, leaving it to the discretion of the councils to make that decision?

Ms. WILLIAMS. I think it should be left up to the fishermen, the people that will be involved, that will be under that system. They know best as to whether or not if they should be allowed to be transferred, sold, leased. You can build provisions in there that will help protect excessive shares owned by one individual or several individuals. You can put some type of requirement, as I had suggested earlier, as a 50 percent income requirement, which we already require in the Gulf of Mexico.

I liked your statement when you said one plan does not fit all regions, and you are very correct on that. So that is why it is very important to let the fishermen decide. You can easily set up a panel. Each of the eight regional councils can set up a panel of the fisheries or the fishermen that this would affect and have them give their input. It is basically a business plan and a person that is in business should be telling us how they want their business structured, in my opinion.

Senator SNOWE. Mr. Giles.

Mr. GILES. I think transferability or lack of transferability does diminish some of the benefits of rationalization. In Alaska today we have got a crab fleet that is 250 boats that are struggling today and the processing sector has ten times the capacity to process it. If the fishery was rationalized and everybody had to use the same assets, you would lose some of the benefits of trying to consolidate at times of low quotas and low fisheries.

I think as far as the concern about control, I think at the North Pacific Council we certainly have taken it up and I think the council has the right authority to determine excessive share caps, whether it is harvesting or processing or vertical integration or whatever the concerns were, to put some strong enforceable caps to make sure that any one sector, whether it is the harvesting or processing or vertical integration, does not grow to a level that is greater than what Congress wants to see happen.

Senator SNOWE. Ms. Behnken.

Ms. BEHNKEN. Thank you, Madam Chairman. I would agree with most of what Mr. Giles said. I believe that we tried long and hard to find a way to come up with a workable IFQ program for halibut that was non-transferable because a lot of people had concerns about consolidation and were not able to do so in a way that provided an entry level and a way to really rationalize the fisheries under the IFQ program.

Our I think conclusion we came to was, as long as you build the program to prevent consolidation, prevent vertical integration, prevent the kind of changes that you do not want to see, and then

schedule performance reviews to ensure that those goals are met, and hold onto the opportunity to change use provisions and re-issue shares if those goals are not being met or have been compromised, then you can accomplish the same thing while rationalizing the fishery with the transferability.

Senator SNOWE. What has been your experience? What has the North Pacific Council experience been with establishing allocations under an IFQ program?

Ms. BEHNKEN. The halibut-sablefish program has a lot of social caveats, if you will, built into it to maintain a diverse fleet, to ensure that second generation people buying in are real, living, breathing people—corporations cannot buy shares. We set low caps on excessive shares. We also have a block proposal that further limits consolidation.

So far those steps have worked well, I believe, to keep the fleet diverse, to meet program goals. My concern remains that over time the people at the table pushing for changes will eliminate some of those safeguards. For that reason, I believe future IFQ programs need to be guided by some goals set by Congress.

Senator SNOWE. Are those goals in this legislation or are there additional recommendations you would make in that regard?

Ms. BEHNKEN. I think there need to be a few additional recommendations in the legislation. One of them in specific that I would add from the socioeconomic perspective is that some percentage of the quota being fished has to be held and owned by active fishermen. I would think that that might be different for different fisheries, but in that way you ensure that second generation, down the line, there will be vessel owners, there will be crewmen, there will be people out on the water actually fishing that still hold those shares, rather than corporations or people who are absent from the resource, who are hiring people to go catch the fish for them.

Senator SNOWE. Would you support new entry?

Ms. BEHNKEN. Absolutely. I think there needs to be an entry level provision, a way built in so that there is an affordable entry level for people in the communities.

Senator SNOWE. Ms. Williams, what has been the experience of the Gulf of Mexico Council with IFQs? I know you did an IFQ program for the red snapper that I gather was never implemented because we established the moratorium.

Ms. WILLIAMS. Yes, ma'am.

Senator SNOWE. What was the experience of the council in establishing that allocation? Could you bring your microphone closer, please. Thank you.

Ms. WILLIAMS. When the council based the establishment of the allocation, they took in historical fishing practices, they allowed the fishermen to pick two of their best three years. That was calculated over the quota percentage and then each fishermen was told what their allocation would have been.

But under the system that the Gulf Council designed under the red snapper fishery, you could sell them, you could lease them, you could transfer them. What the fishermen did not like is that there was not enough provisions put in there as to who could own them, how much one could own. There were some concerns about that.

There were some concerns about the cost, what it was going to cost to administer the program.

But the fishermen right now have been under a derby fishery for so long, they need help. They want their lives back. They want to be able to fish 12 months out of the year and not 50 days out of the year.

Senator SNOWE. That is the testimony we heard when we conducted a hearing down there recently with Senator Breaux.

Thank you very much. Now I would like to recognize Senator Breaux. Welcome.

STATEMENT OF HON. JOHN BREAUX,
U.S. SENATOR FROM LOUISIANA

Senator BREAUX. Thank you, Madam Chair. I thank the panel. It is good to be back with you on the fishing issues.

I will just say, I did not have a chance to make an opening comment. I apologize for not being here when we started. But I support giving the greatest degree of flexibility to the councils to manage the fisheries in their respective areas in a way that is best for the fishermen, the processors, and all of the interests involved in those areas. That is why we have eight councils and not one. I mean, what is best in Alaska may not be best for the Gulf of Mexico. What is good for the Gulf may be totally anathema to the Northeast and to Maine and to Alaska and to everywhere else. There are different interests, different issues, different fish, different problems, different concerns, which all demand different solutions in different regions of the country.

The reason I support the concept of the bill that Senator Snowe has set out is because it allows councils another tool to help manage their fisheries. It is not mandated, nor should it be. Congress should not be micromanaging fish. I have no idea what are the best fishery management practices in Alaska. I doubt that I know very much about what is the best management practices in the Gulf of Mexico, where I come from and have fished.

But I think the council members are charged with that responsibility and if they want to use another tool, like an individual quota, they should have the opportunity to do so. If it does not fit, they do not have to use it. If there is a problem that can be solved by the use of an individual quota system, that I think should be transferable, they should have the authority to do that. Washington should not say no. We should not say yes, you have to, but we should give the councils the maximum degree of flexibility to use the tools that are available to reach good conclusions.

Mr. Plesha, having said all of that, I do not quite understand the suggestion, I take it, that processing plant owners should also have a quota. I mean, if the processing plants own vessels, as some of them do, they would have a quota because they own a vessel. But I mean, why would a processing plant that does not catch fish have a quota to catch fish?

Mr. PLESHA. What we have learned in Alaska is that both processors and harvesters have capitalized symmetrically, equally, in this race to fish that we call open access. When we reach a quota-based system, suddenly the harvesting assets, the boats, become

devalued because you have too many boats, and the plants become devalued.

Senator BREAUX. That is the point I do not understand. The total allowable fish that can be caught will be set regardless of the individual quotas. If we say there are nine million pounds of red snapper in the Gulf that can be caught, the processing plants would realize that there are going to be nine million pounds of fish. They do not really care which boat catches it. They know to be prepared for nine million pounds of red snapper because that is the total allowable catch, and they do not care which boat brings it in and they will fight, offering the best price to the boat owners, to make them process it at their particular plant.

I do not understand how a quota which does not affect the total allowable catch, but only who gets it, creates a problem here.

Mr. PLESHA. Let me give you the Alaskan example for crab. In the crab fisheries we will say the quota is 25 million pounds. We have 250 vessels racing to catch that quota and we will say 25 processing plants racing to process that quota. We operate 2 weeks. If you rationalize the fishery with a quota system, that fishery could last 7 months. Suddenly you need 50 vessels, maybe less, and 5 processing plants.

What happens to the processing plants that are put out of business because of this quota system? They were making a market rate of return under the 2-week fishery. They were getting a return on their capital investments. But when you go to a quota system, suddenly they are completely unnecessary because they have five times more processing capacity instantaneously than is necessary to process that fishery.

Senator BREAUX. So when you have the fishing derby that gets everybody to catch it in a very short period of time, you need an abundance of processing plants because so much is coming in in a short period of time.

Mr. PLESHA. Correct.

Senator BREAUX. So in your case, the derby where everybody goes out there and risks their lives to try and catch as much as they can in the shortest period of time is in the processing plants' interests.

Mr. PLESHA. As it is in the vessels. We have all grown together. At one time there were not 25 plants, there were not 250 vessels. But this industry, at least in the North Pacific, has grown up where we have built plants in extremely remote areas of Alaska that are good for one thing and that is processing seafood, and people have invested in boats so that they can deliver crab and make money delivering crab to our plants.

Senator BREAUX. So is it fair to say in the fishery you are talking about that both the processors and the vessel owners feel of the same mind with regard to this particular issue?

Mr. PLESHA. We have been in discussions with the crab sector for a good deal of time now and there is a growing consensus, I would say it is not a complete consensus but there is a growing consensus.

Senator BREAUX. That is the point. What you are recommending I do not think fits the Gulf of Mexico. But if you think and the fishermen think and the vessel owners think and the processing plants

think and, most importantly, Senator Stevens thinks that is the right thing to do for Alaska, well then, so be it. The council can make that decision on what is in the best interest of Alaska.

But what may be okay up there does not fit in the Gulf, and I just think that it is important to allow the option for the respective councils, Madam Chair, to take the tools and use those that best fits their needs. I can appreciate what you are saying about Alaska and if that is correct—I have no doubt that it is—you would not want to use this tool, whereas the council in the Gulf that Ms. Williams is speaking about may think that it can work, and I think they ought to have the flexibility to do that.

I thank the panel for their being here. Thank you.

Senator SNOWE. Thank you, Senator Breaux.

Now I would like to recognize Senator Stevens and thank you as well, Senator Stevens, for being here today, because I know you are unusually busy as chair of the Appropriations Committee.

STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

Senator STEVENS. I cancelled Appropriations today for this.

[Laughter.]

Senator SNOWE. That tells you how important it is.

Senator BREAUX. That may be too much.

Senator STEVENS. I apologize for being late. I had a little oral surgery, so if I lisp a little bit I hope that you will excuse me.

I would like to have the statement placed in the record in full.

Senator SNOWE. Without objection, so ordered.

[The prepared statement of Senator Stevens follows:]

PREPARED STATEMENT OF SENATOR STEVENS, U.S. SENATOR FROM ALASKA

Individual Fishing Quotas

April 30, 2001

Thank you Chairman Snowe for introducing your bill, holding this hearing, and allowing Alaskan witnesses to participate.

Thank you to Linda and Don for coming to Washington for this hearing.

For Alaska, a harvester and a processor will testify about the impacts of the halibut/sablefish IFQ program.

Much of the testimony at the Anchorage field hearing last year dealt with IFQ's.

I hope we all agree that Congress should provide guidance where appropriate, but leave IFQ details to the Councils.

Alaska is home to most of the nation's largest fisheries. Dutch Harbor is the number one seafood port in the country, and Kodiak, Sand Point, King Cove, and St. Paul are dependent on fishing for their survival.

In 1999, 678 million pounds of fish worth $140 million were landed at Dutch Harbor, and another 331 million pounds worth $100 million were landed at Kodiak.

Alaskans are rightfully proud of our fishery management record. The North Pacific Council sets conservative total allowable catch levels for all the major fisheries it oversees.

We also use strict bycatch and prohibited species catch limits to protect other species.

However, good management alone will not stop a race for fish. Without a quota-based system, there is an incentive to build bigger, faster, better boats, and invest more capital in processing facilities, docks, and other infrastructure.

In the North Pacific, when we talk about ending a race for fish, we call it "rationalizing" the fishery.

The North Pacific Council rationalized halibut in the early 1990's, and Congress rationalized Bering Sea pollock in 1998.

The halibut fishery had become so overcapitalized that there were only a few 24–48 hour openings throughout the whole year.

Fishermen were forced to sea in dangerous weather, and most used their profits to buy larger vessels and more gear to compete the next year.

IFQ's allowed halibut fishermen to spread out their effort and avoid bad weather. We see the results at the fresh fish counter almost any time of year—more fresh fish.

IFQ's also allowed fishermen to avoid re-investing in new vessels and additional gear.

The downside to IFQ's included the displacement of small fishermen with small boats who did not receive quota.

The race for pollock was so bad that the Seattle fleet decided it couldn't compete without 300 foot megatrawlers.

That fishery had so many problems that Senator Gorton and I finally convinced Congress to try to fix things with the American Fisheries Act.

The AFA rationalized Bering Sea pollock in two ways: first, the AFA transferred fish between sectors to pay for a capacity reduction effort. Second, the AFA authorized cooperatives between fishing vessels and processors.

The cooperatives assigned catch history to vessels and processing history to processors, and required a given vessel to deliver most of its catch to one processor. However, vessels can switch processors under certain circumstances.

The AFA has worked—31 of the 129 AFA-eligible vessels (24 percent) did not fish in 2000. Processors have time to produce more high-value fillets and more finished product per ton of pollock harvested.

Bycatch is much lower than it used to be and the fishery is safer because fishermen can avoid the really bad storms.

I urge Senators to look closely at both the halibut and Bering Sea pollock fisheries. These are two very different ways to protect the species involved and end the race for fish.

Senator STEVENS. Let me ask you a series of basic questions. The Magnuson Act, we now call it Magnuson–Stevens, but the whole purpose of that was to protect the reproductive capability of the species that we rely on from the sea and at the same time to provide a management technique that did not bring to Washington every time, did not come to Washington every time there was a dispute in one region or another.

So we created regional councils. I want to make sure we are still on the same track. Do you all agree with the statement I think the chairman made, in effect, that we do want to have a system whereby any management tool such as IFQ is decided upon by the regional councils with minimum guidance from the Federal Government as to what you must do, can do or cannot do? Do you all agree with that? Is that still our goal?

Mr. PLESHA. Senator Stevens, if I might, I think there are some very fundamental issues with regard to ITQ systems or IFQ systems that the councils do need guidance from the Congress on how to proceed with.

Senator STEVENS. Well, I have not gotten to that. But minimum guidance still? You do not want us putting down amendments to the act that says every council shall do this, this, this, this, this, in terms of management techniques, do you? Ms. Behnken?

Ms. BEHNKEN. Senator Stevens, I would say absolutely. I am a firm supporter of the council system as the place to make all those final decisions. To me the role of Congress is to give some very clear guidelines on conservation goals, socioeconomic goals, mitigating socioeconomic impacts, as Senator Snowe's bill does, and then the councils make the decisions.

Senator STEVENS. Is there any region in the country where we still have such a surplus of fish that there is no race for the fish?

[No response.]

Senator STEVENS. I do not know of any. Tell me, is there any place that does not need rationalization, as we call it in Alaska, some method of decapitalizing the fishing industry in that region?

Ms. BEHNKEN. No, I do not believe there is.

Senator STEVENS. I believe that we have reached the point where we have to realize that our goal is to protect that reproductive capability and end the race for the fish. What we just heard from Mr. Plesha about what is taking place in Alaska in terms of the race for fish, with the ever-building fleets and the ever-increasing processing capabilities, that the only thing that can happen is we keep shortening the seasons to the point where the race becomes more intense, the safety becomes more difficult for people at sea, and really the ability to maintain the quality of the product declines because of the competitive factors of getting that quality to market.

We are better off to have a year-round fishery than to have a race for the fish in every council area. Would you disagree with that, Mr. White?

Mr. WHITE. With all due respect, I guess I would disagree a little bit, because I think we have always had a race for fish, Senator Stevens, in every fishery that we have had. That has not been totally unhealthy. I think that the way we have reacted to it has been unhealthy in many instances, by going to days at sea or catch limits. There may be other methods other than a quota-based management program that would deter the effects of overfishing in specific species.

I think there are times of the year with many species of fish that it is seasonally ripe, just like fruit, to harvest them. I think that will continue on with the race for fish. Processors I think have adapted to that also.

The success of fisheries in New England have been multi-species, where we have gone from different species to different species on different seasons, and I am not sure that the quota-based system would address that.

Senator STEVENS. Well, I have sat at this table for a long time. I do not remember the New England area ever having adequate supply of fish.

Mr. WHITE. I did not say that, sir.

Senator STEVENS. Well, if you do not have an adequate supply and you have a race for fish, you are soon going to have a strain on one thing or another. If it results in overcapitalization, then you will soon have an absolute collapse of the fishery, which we have witnessed in your area all too often.

What I am getting at right now is that I think—I agree with what Senator Breaux says. We have so many different concepts and traditions in the fishing industry in the various regions that I think that the wisdom of regional councils have been adequately demonstrated and we need to reinforce those councils, give them further authority in this area, let them make the decisions subject to some guidelines in order to protect some of these things.

I see the light is coming on. But I am still of the opinion that the overcapitalization comes to a great extent because we have created new mechanisms of value in these fisheries that should not be there. I worry about the IFQ's from the point of view of having an-

other piece of paper that must be purchased by an entrant into the fishery, to the point where only either the corporations or the very wealthy can become real participants in the fishery.

So I think what we need to do is to define a way to make sure that these systems are term-limited. Coming from me, that is something. I do not believe in term limits.

[Laughter.]

Senator STEVENS. But when you look at the concepts of IFQ's, the councils should I think review those principles at a set period of time. We must require each succeeding generation at least to review those to see if these processes are going to fit into their lives.

I will have some other questions, Madam Chairman. But I do believe that we have to reach a conclusion in our area about this problem of allocations to the processing plants. I do not believe it would be in our best interest to find a way to reduce and decapitalize the fishing fleet and leave all of those processors out there competing for fish that will come in over 10 months rather than coming in over 2 weeks. It just will not work.

Ms. Williams, I am done. I will come back to you in a minute.

Ms. WILLIAMS. Yes, Senator Stevens. I wanted to comment on what you said about letting the councils have the greatest flexibility. I have sat at the council table and I have been on the other side where I sat out in the audience representing commercial fishermen.

While the council is a very good place to start, while they try to do the very best job that they can, the councils are not always balanced. That is why the fishermen need some degree of protection. Such as on the Gulf Council, we have four commercial representatives, as I said earlier, we have seven recreational representatives, we have five State directors, who probably 90 percent of the time vote down the recreational line.

That is why sometimes we need Congress to come in and intervene on behalf of the fishermen to say, okay, such as under the IFQ–ITQ, let us have a double referendum. Let us see if the council did what the fishermen asked them to do, because very often the council does not take the advice of the fishermen. That is why we need Congress to intervene at times.

Thank you.

Senator STEVENS. Ms. Williams, if you want the Congress to intervene, I would just point our attention towards the intervention of Congress in the development of Alaska's resources. You would be much better off to decide the issues in the region than here in Washington. They do not get decided here. We have been waiting 20 years for decision on many of our resource issues. You are going to wait a long time if you wait for Congress to make the decisions to protect solely the fishermen in terms of the regional councils' activities.

Ms. WILLIAMS. Senator Stevens, also not necessarily intervene. We need some protection from Congress, to give guidance to the councils on what they should and should not do when it comes to protecting our marine resource and our fishermen.

Senator SNOWE. I appreciate your comments, because ultimately the legislation that I designed was in response to the National Academy of Sciences report, which provided recommendations,

guidance, and criteria in the design of the IFQ's. There is obviously a diversity of opinions, as is reflected on this panel, as to which approach is preferable.

Obviously, we want to design something that would be fair, but also to make sure that the fishermen have a voice in the shaping of an IFQ program. That is why it is important to hear your responses here today.

The concern, Senator Stevens, from the New England perspective is that the IFQ program might diminish the owner-operator traditional style of fishing in New England. One of the provisions I have included in this legislation would require—and Ms. Behnken, I know you raised this issue as well—it would require owner-operators to be eligible for the quota. That is important.

But nevertheless, the issue in New England is the consolidation of quota in the hands of a few, because we have many thousand small fishing vessels throughout New England, and we also need the flexibility of moving from one fishery to another. So that is the challenge here.

I would like to ask a question on foreign ownership, especially in the processors. Again, this is another different view, but the American Fisheries Act, due to Senator Stevens' leadership on this issue, requires 75 percent American ownership of a fishing vessel. Now, many processors are foreign-owned.

So how will we address that issue in this legislation in the event we do allow processors to have a share under the IFQ program? Mr. Plesha?

Mr. PLESHA. First of all, the idea of foreign ownership is near and dear to my heart. Trident is 100 percent American-owned. It has done as much as any company can possibly do to help Americanize the fisheries of the North Pacific. Having said that, what we are talking about is people who have legally invested in processing plants throughout Alaska. It has been discouraged and made illegal by the Congress for many years for foreign entities to own vessels. It has not been illegal and it has been encouraged for foreign entities to invest in processing plants.

If you were to develop a two-pie system that allocated processing quotas to plants and harvesting quotas to vessels, the same distinction would be maintained, that the vessels would be 100 percent or 75 percent at least U.S.-owned. But it would make sure that people who have invested in processing facilities do not have the value of their investments taken away from them as you rationalize these fisheries.

I do not think that it would be the intent of Congress to expropriate capital investments, even from foreign-owned entities.

Senator SNOWE. Does anybody else care to comment? Ms. Behnken?

Ms. BEHNKEN. Thank you, Senator Snowe. I did want to respond to some of the comments on processor shares. I share the concern that you have raised about maintaining ownership of the resource, American ownership of the resource, if we allow vertical integration in the fisheries or even by allocating shares to processors. I am not convinced that there is a growing consensus in the industry in Alaska for processor shares and remain concerned about the effect of processing shares on the independent operator, on competitive

markets, and on Americanization, and on our ability to control excessive share.

I guess finally, I do recognize the level of investment that has been made by the processing sector. But that is a one-time expense. To me, IFQ's are designed to meet conservation goals, to protect the fish, as Senator Stevens was saying. The investments that people have made go secondary to that.

There probably needs to be some compensation, but IFQ's are a long-time fix to address conservation issues. To me, the compensation to processors would be a one-time, up front compensation and it does not demand processing shares to do that.

Senator SNOWE. What about a sunset provision? As you know, I have a five-year sunset provision in this legislation. In particular, if an IFQ is not working, this is one means of controlling the process. How do you all feel about it? Just going down the line. Mr. Giles?

Mr. GILES. I think a sunset provision is appropriate for review. The one thing that happened with halibut and sablefish is if you allow transfers, the money starts changing hands and it gets harder and harder to pull the program back after quota and dollars have shifted. The transferability issue, you could have these quotas without transferability and you still get a lot of the benefits. You would not get the economic benefits you would get otherwise.

But clearly the prizes in the IFQ's are the values that quotas create. I would certainly recommend that any new programs have a period of time where you can see how the quotas are working in some kind of a review; in the interim period, though, minimize the amount of permanent transfers, so that there are not a lot of dollars and quota changing hands.

The halibut and sablefish program is on its seventh year and millions and millions of dollars have changed hands, and it would not be practical now to revisit that.

I guess I would like to make one comment, too. There is a lot of discussion about fishermen and processors, and I think you cannot look at every fishery the same way. Certainly in the Bering Sea, the fishermen are corporations. They are big boats. They are not mom and pop operations. It is an industrial fishery. So when we are talking certain fisheries, it is different than a skiff fishery or a day fishery where you do have family operations. Out in the Bering Sea and the pollack and cod and crab fisheries, these are corporation boats, owned by corporations, multiple boat owners, multiple boats owned by the same owners. So it is not the same as discussing a processor-fisherman relationship as it is with the small mom and pop fishery.

Senator SNOWE. Senator Stevens.

Senator STEVENS. Thank you very much.

I have been worried for some time that we may have missed one distinction in the Magnuson Act that we should have made. That is the distinction between the council activities in areas like bycatch, prohibited species, or determining the sustained yield, and determining basically the overall activities within a council area other than fishing, harvesting, and processing.

I sometimes wonder if we should not have created a requirement that there be a harvesting sort of subcommittee at the councils,

made up of harvesters, and a processing group made up of processors, and let all the members of the councils participate in the basics of the allowable catch and bycatch, all of the environmental and protection concepts for the species themselves, but to have, as Ms. Williams says, a fisheries harvesting committee or subcommittee of the council to deal with harvesting issues and processing to deal with processing, because it does seem to me the problems we are having on the councils relate to the conflicts, as Ms. Williams has mentioned, between those what are basically concerned with the overall environment, the basic ecological issues of the oceans, as compared to the business aspects of harvesting and processing.

What do you think about that, Ms. Behnken?

Ms. BEHNKEN. Thank you, Senator Stevens. I guess I am not quite sure what you are looking for. But I do think that the council, the North Pacific Council, has relied fairly heavily on a number of issues on committees made up of members of the industry, members of the processing sector, members of the conservation community, to try and come together and suggest a solution to the council.

That has been very effective with regards to the Stellar sea lion issue. As you know, our RPA committee did a very good job of helping solve those issues. So I think there may be some merit in that. I am not sure how that would play out with regards to this issue, where you really need the sides really working together and the council making the ultimate decision.

But certainly subcommittees have helped resolve some contentious issues in the past.

Senator STEVENS. Well, for the record, I am a little worried about the IFQ issue being left totally to the councils without some guidance for the protection of those people who are actually doing the fishing or doing the processing from those who really would use council techniques to really cripple both portions because they really do not want the commercial fleets out there.

I am worried about that. I think they should have their role in determining policies in the region, but I do not think we should give them the tools to destroy the people who harvest the fish, process the fish for human use. There has got to be some protection in there somewhere for the fishermen.

I know we put this bill together to protect the species, as I said. But the people who are being left out here are the people who should be involved in harvesting and processing. Too often, I think we are going towards distant investor-owned concepts of people who are not at the table and really do not care about what goes on at the table; they only care about the bottom line. Fishing cannot be totally run on the basis of the bottom line.

Thank you.

Senator SNOWE. Thank you, Senator Stevens.

I would like to welcome Senator Kerry, who is the ranking Democrat on the Subcommittee.

STATEMENT OF HON. JOHN F. KERRY,
U.S. SENATOR FROM MASSACHUSETTS

Senator KERRY. Madam Chairman, thank you very, very much for first of all having the hearing. Secondly, I apologize to both col-

leagues and to the panelists that I was not able to be here, just because of the intensity of our schedules around here. I think everybody is familiar with that problem.

But I appreciate Senator Breaux's significant and important line of questioning. I think he has done a good job, from what I am told by my folks,—that is not really what they said, but——

[Laughter.]

Senator KERRY. No, it is what they said.

He and all of us here at this dais have really been deeply interested, not just in this issue of IFQ's, but in the whole question of how we are going to resolve the differences between our different councils, different fisheries, different fishing groups within each fishery. It is very complex. If you ever wanted to do a study on government and government process, I have always said this is one of the issues, not the only one, but it is one of the few that really provides just a classic kind of process study and interest group study and so forth.

It is difficult. I have been through with Senator Stevens several iterations of the Magnuson Act. He is our senior player on all of these issues and he has been involved in more evolutions of the fisheries than anybody around here.

We each come and we are each here on this Committee because we represent states that have important fisheries that make important contributions to the Nation's wellbeing. Last year Senator Hollings and I, in the absence of our ability to resolve the Magnuson effort, proposed a Magnuson substitute that opened up the question of IFQ's. Obviously, we ran out of time before we could have a full discussion, so the moratorium continued.

I am very sensitive to Senator Stevens and Alaska and their fishery and their council. This was the whole concept behind the councils—that we have differing interests here and it is not an one size fits all solution. It just does not lend itself that easily to that.

But I think as Senator Breaux pointed out, we should not, because one fishery has a particular set of interests and a particular notion of how to approach them, we should not, I think, deprive another fishery of the opportunity to have an alternative one. When you look at the experience in other countries who are managing fisheries, the few that are doing it very effectively, have adopted these approaches and they have done it with enormous success.

I know there is a great fear among fishermen. There is fear in my State. I cannot sit here and tell you that the fishermen in Massachusetts are ready to do this. They are not. But I believe there are ways to work through the problems of consolidation and the fears people have about access and the initial allocation. Those are the biggest fears of all, I think, is sort of who gets what.

That is a legitimate fear. If I was in the industry, if I was out there dependent on my income from fishing and it is my lifeline and it has been my father's and grandfather's life, and I am part of a small community and that small community depends on it, I would not want to suddenly be sitting there saying: My God, this may be taken away from me by some bureaucrat over whom I have no control.

So it is a legitimate, very legitimate concern people have. At the same time, we have a lot of latent permits out there. We have

stockpiling of fish. There are a whole lot of problems even in the present that we need to work through, that I think when you look at them some of the principles are really the same in how you approach working through existing problems.

So it is my hope, Madam Chairman, that we will be able to resolve this issue this time. I want to work with you and other Subcommittee members here to devise national criteria for quota management systems, whether it is an IFQ or a fishery cooperative or a community or area quota. It seems to me that we ought to be able to find a way to set up some standards that meet the regional needs.

Senator Snowe and I recognize that the allocation issues are the most contentious, divisive, and potentially destructive decisions that any regional council can make. Use of a referendum is perhaps one way to ensure that fishermen broadly support any IFQ program submitted to the Secretary. But I am also interested in finding alternative ways of improving confidence in the fairness of council decisions and ensuring that IFQ's or any other quota system contain protections against consolidation, improve the conservation record of our fisheries, and do not result in windfall profits at the expense of taxpayers.

So maybe we should consider whether there should be an independent review board for IFQ allocation and fairness issues. I do not know the answer to that. But I am very, very interested in how quota management tools like IFQ's and fishery cooperatives compare with our existing management tools. Today a non–IFQ fishery struggles with very substantial and costly problems, huge regulatory discards, fishery data gaps, inadequate enforcement, and overcapacity.

Right now the New England Council is struggling to reduce mortality in the groundfish fishery by preventing the entry of the latent permits. One proposal would devalue permits that have not fished for groundfish in the last few years. Like an initial allocation of quota for an IFQ, that is a very contentious and emotional issue, despite the availability of $10 million for a latent buy out in a fishery already closely restricted by days at sea and trip limits.

So we are all struggling with the same issues, even in the context of a limited entry fishery rather than an IFQ. There is a tremendous concern about consolidation through permit stacking in the scallop fishery. So we need to explore these as we go forward here, Madam Chairman. That is what you have been doing for the last period of time.

If I could just ask this panel perhaps a couple questions before you move on. The NRC has said that IFQ systems, like any management regime, requires enforcement and monitoring to be effective. Could you share with us—perhaps all of you might respond very quickly to this—in an IFQ fishery what are the minimum levels of monitoring and enforcement presence necessary to ensure compliance with the quota system, as well as to guard against high-grading and increased bycatch? And is this greater or less than the minimum required for a non–IFQ fishery? Do you believe that fishermen and processors would be willing to pay the fees for enforcement and monitoring and, if not, why not?

Who wants to lead off? Yes, Ms. Behnken.

Ms. BEHNKEN. Thank you, Senator Kerry. First just to say I really appreciate your comments about the need for national standards, whether it be for cooperatives, limited entry programs, or IFQ's.

Then to respond to your question, the sablefish and halibut program has probably a lower level than what was initially requested by some of the management agencies when the program was implemented. But from my experience as a fisherman, I would say that any cheating has certainly decreased, definitely decreased under IFQ's from what it was under open access.

The monitoring has shifted primarily to shore-based monitoring at the time of delivery. There is also some monitoring by the Coast Guard contacting vessels at sea, and penalties can be quite severe, including sanctions against your IFQ's or against your quota share. People can lose their quota share as well as the value of their catch for that year. A few people have been apprehended. The penalties have been severe.

The sense of the industry is that they are being watched, they have a lot at stake, and that cheating is not worth it. So I feel that the level is appropriate.

The halibut and sablefish program starting last year paid a maximum up to 3 percent assessment on their ex-vessel value of product delivered for monitoring and enforcement and the IFQ program. It amounted to just last year 1.8 percent, but the maximum is up to 3 percent and seems to be working. It seems to be adequate to cover those costs.

Senator KERRY. Mr. Giles? You do not have to respond if you do not want to. Is the monitoring greater or less in your judgment than in a non–IFQ structure?

Mr. GILES. I do not think it is greater. I think it is different, and the monitoring points under a rationalized fishery might be different than they are under a race for fish.

Senator KERRY. Conceivably more effective?

Mr. GILES. Potentially more effective, although I think there is potentially—when you are fishing short seasons, there is not near the opportunity to high-grade and change your catch makeup based on the value of the fishery. You are catching what you are catching and delivering.

But I think the enforcement in the fishery in Alaska has been good. I think the industry has paid for it and should pay for any additional enforcement required under these systems.

Senator KERRY. Ms. Williams?

Ms. WILLIAMS. Thank you. I can only give you the example of the red snapper fishery. That is the one that I am familiar with, the one that the council had actually worked on. The commercial fishery cannot afford to pay for the monitoring. I do not understand why the monitoring would be any more than what they are faced with today.

When you have a 10-day season, the Coast Guard is out there monitoring you whether you are during the opening or if you are in the closing, because if you are out there fishing and it is closed they have got to know if that is what you are doing. As far as monitoring, we had a coupon system set up with the previous ITQ that we discussed. That coupon followed that fish everywhere it went.

If you did not have a coupon, that fish better be an import or it was illegal.

But the fishermen have vessel payments, they have insurance, they have crew, they have ice, bait, food, fuel. It is not like they are making an awful lot of money on catching these fish. They are not catching the fish for free, and they cannot afford to pay what we were told the system would cost to administer.

Sure, National Marine Fisheries Service would love for the fishermen to pay for it. But when you are under a four million pound quota and it is going to cost you $2.5 to $3 million for the program for you to catch that four million pounds, and you have the foreign imports coming in that you are competing with, you are actually going to go in the hole if you have to pay for the program, all of the program yourselves.

Mr. PLESHA. Senator Kerry, obviously it varies region to region, but just to let you know, in the pollack fishery in the Bering Sea under both open access and the American Fisheries Act cooperative structure, there is an observer on virtually every vessel and two at every processing plant. That has always been paid for by the industry. So at least in the North Pacific, we are a highly monitored industry.

Senator KERRY. Have you thought through whether or not under the IFQ structure it might be less, that you would not have to have that kind of monitoring?

Mr. PLESHA. I think the general feeling, Senator Kerry, is that under an individual quota system there might be more of an individual incentive to, I will say, cheat or high-grade, so that in fact the monitoring would have to stay at that level or perhaps even increase.

Senator KERRY. Okay, fair enough.

Mr. WHITE. Thank you, Senator Kerry. Two points.

I think enforcement is a problem in the State of Maine, we have got 144 harbors, with in many instances multiple places to unload in those harbors.

To go to a quota-based system and fund it possibly could be done because it is under what I understand the consolidation process is, because if you are going to take, whatever, 3,000 license holders and reduce it down to 500, then they probably can afford it. But also then you have got to go on a welfare program to take care of the other 2500 people that have lost their jobs.

Right now we are in a rebuilding program in New England and many of the fishermen are right up against the wall to make daily expenses. Many of them do not even have health insurance at this point. As much as I agree that the industry should participate in some of those expenses, I just do not see how they could do it at this time.

Senator KERRY. Madam Chairman, maybe we can keep the record open. There are a couple questions I might submit in writing. But I do not want to lengthen this particular panel. I thank you very much for your input, and thank you for traveling a long distance to be with us.

Senator SNOWE. Thank you very much, Senator Kerry. I too want to work with you and other members of this Committee hopefully to address many of the issues that have been raised here today, so

that we can move forward with the reauthorization of the Magnuson–Stevens Act. I thank you for your views here today as well.

I too want to thank the panelists for taking the time, making the effort, and, as Senator Kerry indicated, traveling long distances to be here today to present your views before this Committee on a very crucial subject. I know that it is crucial to each and every one of you and the constituencies that you represent. Thank you, and we will be calling upon you again, I am sure, as we proceed with this legislation. Thank you very much.

Senator STEVENS. Madam Chair, let me add to these people, I regret that I was not here because of this oral surgery. But I have read most of your statements and I will read the others. But I do appreciate that you have come so long to be with us today.

Senator SNOWE. Thank you, Senator Stevens. Thank you.

Now we will proceed to the second panel of distinguished witnesses. Our first witness will be Dr. John Sutinen. Dr. Sutinen is a professor in the Department of Environmental and Natural Resource Economics at the University of Rhode Island. Our next witness will be Dr. Michael Orbach. Dr. Orbach is a professor of marine affairs and policy at Duke University. Our third witness will be Mr. Lee Crockett, the Executive Director of the Marine Fish Conservation Network, a coalition of environmental groups and fishing associations.

We want the welcome all of you here today. I should remind the panelists we will present in the record your full testimony, but we ask that you limit oral presentations to 5 minutes so that we can proceed with the questioning. I thank you all very much.

Well, Dr. Sutinen, you look ready. Let us begin with you.

STATEMENT OF JON G. SUTINEN, PH.D., PROFESSOR, DEPARTMENT OF ENVIRONMENTAL AND NATURAL RESOURCE ECONOMICS, UNIVERSITY OF RHODE ISLAND

Dr. SUTINEN. Very good. Thank you, Senator Snowe, Members of the Committee. I appreciate your——

Senator STEVENS. Pull the mike up.

Dr. SUTINEN. I appreciate this opportunity to share my comments with you. I am at the University of Rhode Island. I am a fisheries economist. I have been studying fisheries for roughly 30 years. While I have served in an advisory capacity to managerial bodies as a scientist, I have never played a role as a manager, nor do I have any stake, personal material stake, in the outcome of your deliberations.

I want to base my comments today on a large body of scientific evidence regarding IFQ's. The scientific evidence clearly shows that IFQ's are a potent and valuable tool for fisheries management. Overall, they far outperform other fishery management measures, even in very complex fisheries, such as multi-species fisheries. They conserve the resources better than others and they generate greater wealth.

I agree with the NRC report, otherwise known as the National Academy report on IFQ's, that IFQ's should be made available to managers as a tool. But, like most potent medicines, IFQ's have side effects. The problems of initial allocation and social disruption are very real. These side effects are real and well documented in

the literature. The scientific evidence, unfortunately, does not reveal any one approach to resolving those questions that seems to work best. There is a case by case approach to them.

The IFQ Act of 2001 attempts to mitigate these side effects by prohibiting transfers of quota and requiring a double referendum. The available scientific evidence convinces me that a permanent ban on transfers would seriously weaken and devalue IFQ's as a tool and not put the allocation problems behind us. Further, the experience of referendums in agriculture causes me to fear that IFQ programs would be rare, the exception rather than the rule.

I think this controversy over IFQ's has exposed a problem that I would like to reframe for the Committee if I may. I see it in the context of institutional legitimacy. The legitimacy of our council system has been compromised, if you will. On the dock at least, it is perceived to be weak. They do not trust it. Many see no procedural fairness in the fishery management system, especially when it comes to the initial allocation of quota.

Notice I said "procedural fairness," not outcome fairness. The IFQ Act of 2001 attempts to address the problem of procedural fairness or institutional legitimacy, but the proposed remedies are too drastic and too simplistic in my mind. I urge the Committee to craft legislation that encourages the innovation of decentralized fishery management institutions that have proven around the world to be more legitimate, and I point to the experiment with the area management in the Maine lobster fishery as a case in point. There are many other such examples around the world.

Perhaps referenda at the local level, even below the council level, would work in such a local governance institution. Maybe we would need to think about voting rules, such as a two-thirds majority, that would be less restrictive than that, since they tend to not work well in other contexts.

With regards to the transferability, I understand the concerns with consolidation, but you reduce values significantly. I suggest you consider allowing transfers, at least initially, within these localized communities or governing structures, and provide for a flexible and legitimate framework for relaxing the restrictions on these transfers that you would initially put in place.

Thank you.

[The prepared statement of Dr. Sutinen follows:]

PREPARED STATEMENT OF JON G. SUTINEN, PH.D., PROFESSOR, DEPARTMENT OF ENVIRONMENTAL AND NATURAL RESOURCE ECONOMICS, UNIVERSITY OF RHODE ISLAND

Senators:

My name is Jon G. Sutinen. I am a professor in the Department of Environmental and Natural Resource Economics at the University of Rhode Island. I would like to thank Senator Kerry for allowing me this opportunity to comment on S. 637, the Individual Fishing Quota Act of 2001.

Unlike others here today, I am not a fisherman, a fishery manager, nor a legislator. I've never tried to earn a living working on the water. I've never tried to manage a fishery and faced the tough decisions that often pit people against fish. And, I have never held elective office and tried to represent constituents' interests by writing legislation to improve their lives. Instead, I sit before you as an observer, one who has studied fisheries for three decades. I, like others in my profession, have been working to understand the complex system of interactions between humans and nature that occur in fisheries. The results of our profession's research, I believe,

can help you craft good legislation—legislation that serves the interests of your constituents, our marine resources and future generations.

A failing grade?

In my judgment, our fishery management establishment deserves a low grade for its performance over the last quarter century. Forty-six percent of the fish stock groups that are under the purview of the US National Marine Fisheries Service, and whose status are known, are over exploited. Another 39 percent are fully exploited and may be in danger of becoming over exploited. These are the results of spending $660 million per year on the management of an industry that generates $3.6 billion per annum. [1]

The United States is not alone, however. According to The Food and Agriculture Organization of the United Nations, 69 percent of the world's fish stocks for which data are available are exploited at or beyond the level corresponding to their maximum sustainable yield. After more than 25 years of trying, our fishery management institutions have failed to conserve resources and improve the economic health of fishing communities.

The New England groundfish fishery is a dramatic example of management failure, resulting in both overfishing and economic losses. The volume and real value of New England landings of species regulated under the Multispecies Fishery Management Plan have declined markedly since the early 1980s. The combined landings volume of haddock, cod, and yellowtail founder dropped from 85–110 thousand metric tons in the early 1980s to 15–25 thousand metric tons in the mid 1990s—roughly an 80 percent decrease. The value of these landings adjusted for inflation dropped by 60 percent despite a general trend of increasing real prices over the last 20 years. The most extreme case of decline was exhibited by the relatively slow growing redfish with drastic decreases in both landings and revenues. Redfish landings fell from 14,800 metric tons in 1979 to 322 metric tons in 1996, the lowest since the fishery for this species began in the 1930s. In 1994, federal scientists reported that excessive fishing had caused the stocks of New England yellowtail flounder and haddock to collapse. This mismanagement of groundfish is costing US citizens an estimated $150 million per year in foregone net value, according to a study by scientists at the Northeast Fisheries Science Center.

The New England Fishery Management Council continues to struggle with its efforts to rebuild overfished groundfish stocks. Georges Bank cod and Gulf of Maine cod face fishing mortality rates that are too high to end overfishing. The spawning stock for Gulf of Maine cod is at a record low level. The Council's Multispecies Monitoring Committee concluded that a 67 percent reduction in fishing mortality was necessary to rebuild the other stocks in the groundfish complex.

Then there is the story of species left unregulated. Just a few years ago, low value species such as dogfish and skates were in great abundance, having filled the niche vacated by depleted cod, haddock and other valuable species. Now, however, even the lowly dogfish is overexploited. Some species of skates too appear to be at risk. The National Marine Fisheries Service admits that management plans in New England have not prevented overexploitation of the species under their management authority.

This record of decline and ineffective management can be reversed. Amending the Magnuson-Stevens Fisheries Conservation and Management Act (MSA) is needed to improve the way we manage our fish stocks. The question is how can this be done? Certainly, authorizing the use of IFQs is a crucial step towards successful fisheries management.

IFQs are a potent and valuable tool for fisheries management.

There is a worldwide trend towards the use of IFQs. A growing number of governments are bringing their fisheries under this form of rights-based management. They are doing this because IFQs work well. IFQs have a proven record of accomplishment of promoting sustainable management of fisheries and producing wealth.

The scientific evidence is quite clear on these achievements. The Organization for Economic Cooperation and Development (OECD 1997) reviewed management experiences in more than 100 fisheries in 24 member countries. This is the only study I know that systematically compares IFQs with more traditional approaches to fisheries management. The evidence shows that IFQs are an effective means of controlling exploitation, of mitigating the race-to-fish and most of its attendant effects, of

[1] In other words, management expenditures amount to 18 percent of landed value. The data are from OECD (2000).

generating resource rent and increased profits, and of reducing the number of participants in a fishery. [2]

IFQs have been effective in limiting catch at or below the TAC determined by management authorities. OECD reports that catch was maintained at or below the TAC in 23 out of the 31 IFQ fisheries for which information was available. The TAC overruns that did occur were due to inadequate monitoring and enforcement. Where overexploitation occurred, it was due to poor data that allowed the TAC to be set too high.

The OECD evidence demonstrates that IFQs eliminate or prevent a race-to-fish and the resulting problems of over capacity, excess effort, waste, unsafe harvesting practices, gear conflict and loss, and reduced product quality. Two of the most notable cases are the Canadian halibut and sablefish fisheries. Seasons that had been reduced to a few days under competitive TACs and limited entry were increased to most of the year almost immediately.

Elimination of the race-to-fish has not been universal, however. For example, in the Netherlands sole and plaice and Norwegian cod fisheries, IFQs failed to eliminate the race-to-fish. The race-to-fish in these fisheries is because the fishery could be closed down when the national quota was met, even if individual quotas had not been filled. In Iceland, the option to choose between individual effort and catch quotas in the demersal fishery led to an increase in investment. A race-to-fish occurs in the New Zealand flatfish fishery in years of low abundance. Most of the fisheries where a race-to-fish persisted used time or area closures independent of the attainment of TAC which may have been a factor.

This illustrates the importance of satisfying first principles when designing IFQ programs. It is essential not to contravene or block the incentives that IFQs put in place. Blocking those incentives reduces IFQs effectiveness.

IFQs are not problem-free, but . . .

The OECD study also demonstrates that IFQs present problems with the initial allocation of quota and with enforcement and compliance. Of the 55 IFQ fisheries reviewed by OECD, quota allocation problems were documented in ten fisheries with no counter examples.

The initial allocation of quota is *the* major impediment to the adoption of IFQs in most fisheries. The exceptions are fisheries with a relatively small number of producers who are relatively homogeneous. The struggle to find a fair and just allocation of harvest rights is difficult, time-consuming, and adversarial. The current debate over processor shares in Alaska is an apt example of this.

Allocation of fish (the access to fish or the rights to catch fish) is a problem that plagues all forms of fisheries management, whether based on IFQs or traditional methods. Allocation is the constant topic of meetings and decisions made by fishery managers, and the subject of legislative deliberations such as this one.

There is a tradeoff related to allocation and IFQs that should be appreciated by all concerned parties. While the initial allocation of IFQs is extremely difficult, the 'pain' is all up front and once-and-for-all. This is especially true for transferable IFQs, since thereafter a market emerges to handle the reallocation of quota that is needed for the fishery to evolve. If the IFQs are *not* transferable, then the management authorities will have to revisit the allocation issue repeatedly.

Without a market to handle allocation issues, the management system pays the price of allocation struggles on a continuing basis. It escapes the high up-front of initial allocation brought on by transferable IFQs, but it must face the continuing distraction of dealing with allocation instead of conservation.

Actual solutions to the initial allocation problem have taken a wide variety of forms. This variety is probably because there is not universal agreement on what constitutes a fair and just allocation. Each solution is the result of a negotiation and bargaining process. The important aspect of the solution is the process—the process by which the solution is found. An open and transparent process is needed to insure institutional legitimacy, credibility, and trust. As an aside, we in the US have not yet designed a process that satisfies these criteria.

Higher enforcement costs and or greater enforcement problems occurred in 17 fisheries compared to five that experienced improvements. Enforcement proved particularly difficult in high value fisheries, in multispecies fisheries, and in transnational fisheries. Although enforcement costs frequently increased under individual vessel quotas, there was often an increased ability and willingness of fishermen to pay these increased costs. Support from industry for increased enforcement is common. IFQ holders recognize that the illegal fishing by others damages the

[2] The report by the National Research Council (1999) drew upon much of the evidence contained in OECD (2000).

value of their quota rights and have an incentive to aid authorities with enforcement.

The rents generated by IFQs provide governments with a source of revenue to cover the costs of enforcement and administration. In the many IFQ fisheries in Australia, Canada, Iceland, and New Zealand, industry pays for administration and enforcement with fees levied on quota owners. In some cases quota holders voluntarily paid for added enforcement, such as in the New Zealand lobster fishery. In addition, IFQ management has led to increased cooperation between fishermen and enforcement authorities in several cases, including the New Zealand fisheries in general, and the US wreckfish fishery. Fishermen reported improved compliance in the Canadian halibut fishery. [3]

Despite the many and serious problems that have confronted IFQs, fishery managers are finding ways to mitigate, if not solve, many of these problems. Potential participants commonly are afraid that they will not receive their fair share in the initial allocation of quota. Others fear that landings and processing will leave their communities, and that large corporations will take over the fishery, and other concerns. We have learned a great deal over the last 20 years of IFQ management. I believe that managers can find designs of IFQ programs that satisfy first principles (such as creating an exclusive harvest right) and still address the concerns of fairness and justice. Where no solutions are immediately evident, we should craft the legislation to encourage innovation and experimentation.

How do IFQs compare to other fishery management measures? [4]

In their assessment of other management measures, OECD concludes as follows:

Total Allowable Catch Quota (TAC)

Competitive TAC management causes a race-to-fish with the attendant effects of over capitalization, shortened seasons, market gluts, increased harvesting and processing costs are particularly evident. Competitive TAC management generally has not effectively prevented overexploitation of the fishery resource—though it has been successful in some fisheries.

Limited Licenses

Over capitalization and increased harvesting costs occur with limited licenses, but the evidence is confounded by the presence of TACs in many of the reported cases. There have been some initial allocation problems, but the amount of evidence is too small to draw a firm conclusion. Limited licenses have not stemmed the tendency to overexploit the fishery resource.

Size & Sex Selectivity

Size and sex selectivity measures do not mitigate the race-to-fish and result in increased enforcement costs and/or problems are supported by the evidence. There is only weak evidence that the average size of fish landed increases and that discards increase.

Closures

It is clear that time and area closures have not been effective in assuring resource conservation, though conservation might well have been worse without them.

Individual Effort Quotas

Individual effort quotas (e.g., days-at-sea, trap quotas) result in over capitalization, increased harvesting costs, and increased enforcement problems.

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[3] Other problems with IFQs that were identified included: underreporting of catch and data degradation (documented for 12 fisheries, but improvements were made in six fisheries); industry resistance to IFQs in eight fisheries, but the opposite was true in five fisheries; several cases where quotas were consolidated (documented in 12 fisheries, but 5 showed contrary evidence), and rules were in place to limit consolidation; little evidence that smaller vessels are eliminated when individual vessel quotas are introduced (two fisheries where elimination occurred and five where it did not); class divisions were documented only for the Icelandic fisheries.

[4] The OECD study represents one of the few, if not the only, attempts to comprehensively assess the performance of the full suite of management measures. The study found considerable evidence, and excellent scholarly studies of individual quotas, limited licenses and total allowable catch measures. However, there is great paucity of evidence on the performance of the other management measures (size and sex selectivity, closures, effort quotas, vessel catch limits and gear and vessel restrictions). While the theory of how these measures are supposed to work is well developed, the supporting empirical evidence is missing. The actual application of these methods appears to be conducted more on faith than on a sound factual basis.

Vessel Catch Limits

Vessel catch limits (as distinguished from IFQs) increase enforcement costs and problems.

None of the other (non-IFQ) management measures perform well when they are used without IFQs. That is, they do not effectively control exploitation and mitigate the race-to-fish. They do not, however, present as many social and administrative difficulties as IFQs.

Most management measures are expected to provide some degree of conservation benefits in the form of maintaining or rebuilding resource stocks to desired levels. Unfortunately, in practice, none of the management measures assures optimal resource conservation. Achieving optimal conservation is complicated by several factors or conditions, including multispecies, bycatch and discards, and wide fluctuations in resource stocks and markets.

What do IFQs provide that other approaches do not?

IFQs provide important benefits that other approaches do not. IFQs effectively constrain exploitation within set limits, mitigate the race-to-fish, reduce over capacity, gear conflicts and improve product quality and availability. Producers benefit, consumers benefit and, when the resource rent is used to pay for the cost of management, the general public benefits.

In addition, there are environmental benefits that are often overlooked. For example, reducing the 300,000 traps in Area 2 of the American lobster fishery is expected substantially reduce entanglements with whales, while at the same time realizing the same yield. Based on the evidence, I expect IFQs or transferable traps entitlements will ease this downsizing more effectively and with less sacrifice than other alternatives.

Only IFQs and other rights-based approaches have the potential to achieve this much.

Why do IFQs perform so well?

Fishery economists and most social scientists are not surprised that IFQs perform so well in comparison to other management measures. IFQs solve numerous problems by providing exclusive harvesting rights. Other 'rights-based' management measures have the potential to do the same. None of the traditional management measures provides exclusive rights and, therefore, cannot solve the problems created by nonexclusive use of the resource.

In fisheries without exclusive harvesting rights, no fisherman has the right to exclude other fishermen from harvesting any part of the resource. From an individual fisherman's perspective, leaving fish to grow and reproduce is done at the risk of losing the fish to other fishermen. Thus, there is no incentive to conserve the resource for future use, since no fisherman has exclusive use. The nonexclusive nature of fisheries resources is the fundamental cause of overexploitation in modern fisheries.

Without an exclusive right to harvest a quantity of fish, competition to catch fish before others do causes a 'race-to-fish', resulting in fishing seasons that are shorter than optimal for maximum economic performance, landings that are too small and of inferior quality, and excessive investments in vessels and gear.

The nonexclusive nature of harvesting fisheries resources also leads to conflicts among user groups. Since no fisherman has the right to exclude another from access to the resource, two or more fishermen can interact at the same time and place in a fishery. They impose external costs on each other in the form of gear or other losses. Mobile gear (such as trawls) may fish in the same area as fixed bottom gear (such as traps), causing damage to one or both of the gears. Large, efficient vessels can operate in a fishery on which small-scale fishermen are heavily dependent, draining the stock available for capture by the smaller fishermen. Failure to consider these external costs when deciding where and how to fish causes inferior economic performance in the fishery.

Processors, distributors, wholesalers, retailers and consumers are also affected by the nonexclusive nature of harvesting. The race-to-fish can result in large quantities of fish being landed during short periods, requiring the buildup of excessively large processing, storage and distribution facilities to handle the periodic peak loads. Wholesalers, retailers and consumers find supplies of specific fish are abundant for short periods and scarce for long periods; or, the product is processed for long shelf life, generally reducing the quality of the products and price on the market.

Of all the management measures available to managers, rights-based management measures (such as IFQs) have the greatest chance of correcting the fundamental problem of nonexclusive harvesting rights and of reducing conflicts among users, producing superior economic performance while conserving fishery resources.

Are IFQs appropriate for multispecies fisheries and ecosystem management?

Despite the complex challenges presented by multispecies fisheries, IFQs outperformed all other management measures. This is not to say, however, that only IFQs are needed in multispecies fisheries. Rather, when other management measures (such as mesh size regulations) are used in combination with IFQs, performance was superior. When not used with IFQs, performance suffered.

Fisheries that harvest multiple species are more difficult and costly to manage than single species fisheries. A high proportion of multispecies groundfish fisheries in OECD countries experienced poor resource conservation and economic performance. Relatively non-selective trawls are used in these fisheries, having high by-catch and discard rates, further weakening management's control on exploitation patterns (unless by-catch and discarded catch are monitored adequately).

Multispecies fisheries complicate all forms of fishery management. In multispecies fisheries where several species are caught jointly, no single management measure, or combination of measures, can achieve the optimal fishing mortality for all species. Almost any change in management measures will favor one species at the expense of another. Good conservation on all stocks appears infeasible in such cases.

With respect to the issue of ecosystem management, there is widespread consensus on the importance of accounting for multispecies interactions in fisheries analysis and management, but only a limited amount has been accomplished to date. The theory for developing models to explain and analyze interactions is well developed. Biological and economic empirical evidence, however, is inadequate. Attempts to model multispecies fisheries in several countries are ongoing and are already providing information for the management process in some fisheries. IFQs seem to offer high promise, relative to non rights-based approaches, for wrestling with the challenge of managing complex marine ecosystems. Other rights-based approaches are currently being explored by researchers, but no experiments or tests of these approaches are underway.

By-catch is inevitable in many multispecies fisheries. Incentives play a major role in determining the amounts of by-catch. An individual fisherman will try to control by-catch as long as the benefits outweigh the costs to him. Effective management recognizes this and creates or modifies incentives to lessen the impact of by-catch.

There is some anecdotal evidence suggesting that substantial discarding at sea and underreporting of landings have increased since the implementation of IFQs. However, a study done for OECD found no discernible increase in discards under an IFQ system compared to the previous limited effort management scheme.

Some countries have developed tools to counteract discarding. These tools include setting TACs by species such that different TACs can be filled approximately simultaneously; employing standard harvesting technologies; simple and well advertised discard rules; flexible monitoring and surveillance designed to deal with the most pressing problems at each point in time; and addressing alleged violations quickly and effectively with penalties high enough to deter such practices.

Are IFQs guaranteed to conserve the fishery resource and produce wealth in a given fishery?

No. IFQs do not guarantee conservation and wealth in a given fishery. Rather, the evidence says that the chances of conservation and wealth are far greater with IFQs than other management measures; and that the risks of failure are far less with IFQs than without them.

Most IFQ fisheries have yielded great benefits; and some have experienced unfortunate outcomes. Just as when the Dow Jones average rose from 2,000 to 10,000, the wealth of share holders in total grew. But mixed in with the many stocks that gained in value, there were some that lost value. The outcomes for any one stock and any one investor is uncertain. Likewise, the outcomes in any one fishery are uncertain; and the outcomes for any one participant in a fishery are uncertain. We can only try to act so that we maximize the chance of success. IFQs provide that option.

Comments on & suggestions for shaping S. 637

Now I would like to comment on some of the provisions in S.637. I believe the bill in its current form can benefit from a few critical changes.

Prohibition on IFQ transfers

Prohibiting transfers of IFQs will result in a number of problems. I list some of them here and offer an alternative approach to solve what I believe to be the reason motivating the prohibition.

Most of the successful IFQ fisheries in the world now allow, in fact depend on, transfers of quota by either sale or lease or other means. Transfers allow markets to function smoothly and to handle the allocation problems that too often cripple the management system.

Several of the fisheries reviewed by OECD initially prohibited transfers of quota when IFQs were first introduced. However, shortly after the fleet gained experience with and trust in the IFQ program, they saw the gains to be realized from trading quota. Fishermen restricted by non-transferable IFQs eventually persuaded the government authorities to allow transfers.

By prohibiting transfers—except for hardship and among family members—S.637 will severely impair the effectiveness of any IFQ program. The transfer prohibition is a 'one-size fits all' approach to IFQ programs. Nontransferable quotas may be appropriate in some fisheries, but certainly not in all.

The prohibition on transfers creates numerous problems.

1. The inability to transfer partial fishing rights makes it difficult for fishermen and fishing families to adjust to conservation requirements.

2. The prohibition will reduce incomes for those fishermen whose quota composition does not match their fishing opportunities.

3. The prohibition will instill an incentive to cheat, to bust one's quota. If the quota are transferable, a fisherman who wants to fish more than his quota has the option to acquire more through the market. The incentive to cheat is less with transferable IFQs than without.

4. The prohibition will weaken the tendency to reduce fleet capacity and over capitalization.

5. The prohibition on selling and leasing prevents the IFQ from taking on value, a value that a fisherman can use if s/he elects to retire or otherwise exit the fishery.

And, there are other ill effects of the prohibition for given specific circumstances.

I can understand the concerns that some producers and those who live in fishing communities have with transferability. They seem to fear that their way of life will be severely impacted by transferable quotas. To me, it is rational that they are willing to accept IFQs if transfers are prohibited. However, based on the evidence, I'm also convinced that many of those who now oppose transfers of quota will, once they have gained experience with IFQs, call for a relaxation of the prohibition.

Prohibiting transfers *by law* is too inflexible in my judgement. If, after an IFQ program is put in place, a majority of fishing interests does want transfers, they must ask Congress to change the law. There must be a more flexible alternative.

I propose a compromise. I propose that S. 637 be modified to either

1. Initially prohibit transfers but establish a flexible framework in which Fishery Management Councils and the Secretary of Commerce can decide to allow the sale, lease and other transfers of quota.

2. Restrict transfers of quota to within specified communities or regions of a fishery—user groups or areas to be determined in the plan development process. Also allow for a framework adjustment process whereby the restrictions can be amended or entirely lifted.

Referendum requirement

The double referendum requirement is an intriguing idea. It appears to be a way to insure that the procedures and provisions are fair to the affected parties.

A similar voting procedure is required for establishing agricultural marketing orders. Most agricultural marketing orders cover crops that are grown by a relatively few producers and marketed in few channels. Marketing orders are not viable for crops spread over wide areas, involving many producers who sell to many different markets. It is just too difficult to get so many heterogeneous crop growers to agree—with a two-thirds majority—to a common marketing order.

I am concerned that the referendum requirement establishes a hurdle that is too high. Many of the fisheries subject to federal management are quite large, involving hundreds—even thousands—of producers who operate over large geographic areas and sell to a wide variety of markets. Given the experiences in marketing order programs, I fear that agreements on IFQ programs will be rare—the exception rather than the rule.

As an alternative, I suggest devolving to relatively small groups the authority to set their own rules, including the use of IFQs. I urge the Committee to examine, for example, the experiences of the producer organizations in the UK. Each PO is awarded a quota. Members of each PO decide how they fish their group quota. Some POs have chosen to operate under IFQs and others have not, but all of them work

under a group quota. Applying this approach to groundfish in New England, we can imagine awarding a quota for cod to the fishermen of Gloucester, a separate quota of cod to fishermen of Portland, etc. Allow each group to decide for themselves how to fish their quota, and require that a referendum be held in making that decision. This will give them to power to govern their lives and their destiny. In addition, this will create a stronger incentive for stewardship over the resource.

Devolution: Bottom-up trumps top-down

Senator Snowe has said that the IFQ Act 'provides . . . the affected fishermen with the ability to shape any new IFQ program to fit the needs of the fishery.' I believe the Senator is in line with another global trend, the move by governments towards giving fishermen more control over their fisheries. Abroad this is referred to as devolution—a set of institutional arrangements where the authority and responsibility of governing the use of marine resources is passed down (devolved) to the local level.

Why are governments devolving management authority? Because governing from afar—the traditional top-down approach to fisheries management—is not working well. The burden of centralized fisheries management has become too great for many governments, and they have found it less costly and more effective to allow users and local communities to shape the nature of their fishery management programs. The government plays the important role of insuring the users conserve the resources and protect the environment, but the government does not instruct the users how to achieve those ends.

User participation in the development and implementation of fishery management plans is found to be a critical element for successful management. Co-management arrangements are one of the more promising avenues for greater user participation. A substantial body of evidence demonstrates that more local control over management policy yields significant gains. OECD and many other studies have documented the benefits of meaningful user participation.

Moves towards more decentralized fisheries management in the Maine lobster fishery and in other fisheries here and abroad seem to be successful (in terms of conservation and social and economic outcomes). The Netherlands, Denmark, Norway, Sweden and the United Kingdom have devolved fishing rights and responsibilities to producers. These countries have found that the local control reduces administrative costs and greatly improves compliance with management regulations.

A significant benefit of co-management is the use of local knowledge about stock dynamics and ecology. Another advantage is the flexibility to adapt with short notice to changing management objectives and fishery conditions. Co-management at the local level achieves greater economic stability and decreases fishermen's perceptions of economic risk. Co-management and IFQs have been found to strengthen each other in some fisheries.

One of the greatest gains of user participation in management design and implementation is users' support of the program. It is nearly impossible to adopt and implement effective fishery management programs without the widespread support of commercial and recreational fishers. However, this support is often missing or very weak among users of our fishery resources. If fact, opposition to proposed management measures is all too common.

Some observers note that fishermen frequently oppose conservation and management measures because they have little assurance that their sacrifices will be sufficiently rewarded in the future. Their insecure claim on the future rewards of their sacrifice naturally leads them to oppose strong conservation measures. Therefore, they pressure Councils, NMFS and their elected representatives not to enact strong conservation measures. And, when measures they oppose are implemented, they work to subvert those measures. The result is ineffective management.

Authorizing the use of IFQs is expected to improve the prospects that fishermen's sacrifices will be worth it to them. But, the legislation should be further amended to address the problem of industry opposition to strong conservation and management measures. For example, producers can be given more of a voice in the selection of specific management measures. One way to do this is to encourage decentralization of fisheries management.

While the current version of S.637 is a step in the right direction, it does not provide fishermen with sufficient ability to shape the program to fit the needs of their fisheries. In addition, there appears to be reluctance by the Councils and NMFS to devolve to local organizations the authority to customize the rules to meet local conditions and needs (especially those rules that have only local impact). The Magnuson-Stevens Act could be amended to encourage Councils to undertake experiments with decentralized approaches to fisheries management. Our fisheries would benefit

from more experiments along the lines of the area management approach in the Maine lobster fishery.

Thank you.

Senator SNOWE. Thank you.

Dr. Orbach.

STATEMENT OF MICHAEL K. ORBACH, PH.D., PROFESSOR OF MARINE AFFAIRS AND POLICY, DUKE UNIVERSITY

Dr. ORBACH. Madam Chairman, thank you for the opportunity to address you this morning. I am the Director of the Duke University Marine Laboratory, but I am a cultural anthropologist by training. I deal with the very interdisciplinary unit that brings all of the natural and social sciences to bear on our natural resource questions, including fisheries. I deal with what is typically called the human dimension of these issues, and of course IFQ's are primarily focused on a human dimension question.

I have worked with all eight of the Regional Fishery Management Councils around the country on various issues. I have worked with NOAA and I spent a decade as a State Fishery Commissioner in North Carolina. So I have seen this perspective from many different angles.

I would add that I have also been involved in the consideration and generation of several different kinds of limited access systems, always working with the industry, and I would point out that in some of those cases we decided not to have IFQ's or a limited access system. In other cases, the decision of the group was to have them. So I have also been involved in facilitating all kinds of decisions on this particular kind of issue.

I make a number of points in my written testimony, but I want to focus on three here this morning. The first is the question of where we are in human history really with what is called the closure of the ocean commons. Rather than being an unusual feature of the way humans deal with natural resources, rules such as you find in IFQ's or limited access are really the general rule for how humans have by and large over time dealt with resource questions.

We have always had rules of access. Now, the big exception to this with ocean fisheries is generally the last century and in particular since World War Two, where our ability to use and extract ocean resources has essentially far outstripped our governance structure. What is happening now is we are catching up. Because of the tremendous pressure on our ocean resources, as Senator Stevens points out, the fact that there are very few fisheries that are not very heavily utilized, we are now beginning to apply the rules that we apply to every other natural resource area.

I would note that every other natural resource area except marine fisheries has had some form of limited access rule in effect for decades, if not almost a century in the case of forestry, for example. So in a sense, we are getting back into the way that humans ought to be relating to natural resources, after a great time of not having the appropriate governance structure.

Second is the principle of parsimony. This has been noted by the panels earlier, that the principle here is put in law only what you really need to put in law. There are some features of S. 637, which I think is generally well crafted, that are clearly appropriate be-

cause of the equity concerns and the common concerns of industry, for example the excessive share provisions.

I would add that in general, if you look at the way that limited access systems have been implemented, those that have attempted to design to avoid excessive shares have in fact done so by and large. Those that did not design to avoid it, it has occurred. So I think Senator Kerry was correct when he said that that is a workable problem, that there are in fact ways to design to avoid excessive shares.

I think in the areas of transferability and sunset provisions, however, there is a tremendous amount of difficulty, as Dr. Sutinen said, in designing a system that you shackle in a way that cannot achieve its intended objectives. I think that is a tremendous problem. I think you lose an incredible amount of flexibility and ability to achieve objectives by disallowing for transferability, and again the particular problems that arise, whether it is public trust, resource extraction problem, or an excessive share problem, you can deal with those separately without the larger prohibition against transferability generally.

Similarly, sunset provisions—I should add, by the way, also that I was a member of the National Academy committee that produced the Sharing the Fish report. In that report we advise against a blanket provision on sunsets, because again they are something that will not allow the system to work the way it was intended to work.

Now, if you want to have provisions for a periodic review, there are certainly ways to do that without a sunset provision formally. If you do consider sunsets, consider the length carefully. Five years sounds like a long time, but when you set up a system like this and try to allow it to work naturally, oftentimes it takes longer than that to see the results come out that you even can review. So I would take great care with those transferability and sunset restrictions.

Similarly on the processing issue, I think the former panel had it right. We have to decide whether we view that, the whole processing question, as a transition issue or whether it is an issue that needs to be designed into the Fishery Conservation Management Act. In general, the farther you get away from specific conservation objectives the more difficult it becomes to structure a system such as a limited access system.

In a sense, I think Mr. Stevens was correct when he said that it is an important issue. If you really do want to address processing as part of the limited access question, you may have to consider larger structural changes in the FCMA itself to have that occur in a proper fashion. There are many ways to deal with transition phenomenon.

Finally, the issue of co-management. Co-management does work. I would state one caution on the double referendum issue, though. Certainly a referendum on the submission of the plan may be a very appropriate democratic procedure. But a referendum on whether to initiate the consideration, however, is quite a different issue. As a social scientist I am aware of the fact that the most valid survey results come when the people you are surveying are completely educated and informed about what you are asking them

about. A referendum at the beginning of a process may not actually allow fishermen, scientists, managers to be educated enough on the issues to make an informed decision.

Again, I think a referendum on submission is absolutely appropriate. A referendum on whether to start thinking about the process I think is rather dangerous, actually.

Finally, I think socioeconomic data needs are paramount here, and I hope, Chairman Snowe, when you consider your recommendations on appropriate research that is needed to adequately consider these systems you will fully consider the needs to bolster the socioeconomic data and research as well as the biological.

[The prepared statement of Dr. Orbach follows:]

PREPARED STATEMENT OF MICHAEL K. ORBACH, PH.D., PROFESSOR OF MARINE AFFAIRS AND POLICY, DUKE UNIVERSITY

My name is Mike Orbach, and I appreciate the opportunity to testify regarding S. 637, the IFQ Act of 2001, and the general topic of access limitation in marine fisheries management. My formal training is in economics and cultural anthropology, and I have worked since the 1970's on the applications of social science to marine fisheries management at the local, regional, national and international levels, including on the design of several limited access systems. I have worked with NOAA and all eight of the Regional Fishery Management Councils, all three Interstate Marine Fisheries Commissions, and several individual states including having served for a decade as a member of the North Carolina Marine Fisheries Commission. I also served as a member of the Committee to Review Individual Fishing Quotas of the National Research Council, which produced the 1999 report, "Sharing the Fish: Toward a National Policy on Individual Fishing Quotas". I am testifying today as an individual, not representing any organization or interest group. I will confine my remarks to general aspects of access limitation and IFQs, but would be happy to provide further detailed remarks on specific aspects of these topics.

The Enclosure of the Ocean Commons

The most general point I would like to make is that the development of limited access provisions in fisheries management is part of the more general movement towards "enclosure" of the ocean commons. The ocean and its resources have been viewed a 'the last frontier' on our planet, and as such have been subject to free and open access to those who wish to extract its resources and otherwise use or benefit from those resources. However, as human effects on ocean resources increase, through extraction, pollution and other alterations of the ocean environment, the need arises for the development of governance systems that preserve the public trust in these resources and environments while allowing for reasonable use and impact. Questions of limitations on access to these environments and resources naturally arise as part of these potential governance systems. IFQs, or any other access system, must be viewed as only part of the means to achieve legitimate objectives of policy and management, and where they are judged appropriate should be applied consistent with public trust principles, including those of equity as well as conservation.

Given the general history of human interactions with public trust resources, however, it is difficult to image that some form of access limitation will not eventually be legitimately considered in many if not all situations of ocean resource use, including fisheries. Although limited access systems place different constraints on traditional fishing communities, they have also been shown to provide significant benefits (NRC, 1999).

The Role of Social and Economic Factors in Marine Resource Conservation

It is important to recognize that *any* form of conservation policy has both social and economic objectives and social and economic impacts. No resource conservation measure has 'solely biological or ecological' objectives or impacts. This is recognized in the formulation of the concept of "Optimum Yield" in the Magnuson-Stevens Act. No quota; no season; no gear regulation is devoid of social and economic aspects in decision-making, nor of social and economic impact. Thus, the standards of holistic application of social and economic considerations to IFQs are equally applicable to virtually all fisheries management policy and management decisions, and should be

consistently applied throughout the decision-making process. The need for better social and economic data to make these judgements was clearly noted in the Sustainable Fisheries Act amendments of 1996. In this area IFQs and other access limitation systems are different in degree, but not in kind; they all require much better social and economic data and assessment. The data we have show that IFQ systems have, by and large, met their design criteria.

Caution in the Upward Aggregation of Responsibility and Authority in Fishery Management Decisions

The 1999 NRC report (NRC, 1999) notes the desirability of management decisions being made at the lowest possible level subject to appropriate public trust oversight. S. 637 generally follows this principle, recognizing both the focal role of the Regional Councils and the desirability of broad participation of constituents in the policy development and implementation process, including the potential for constituent referenda in those processes. However, caution should be exercised in restrictions placed on these processes, including specific provisions such as 'sunset' requirements (s.303(e)(2)(E) and (F)) or restrictions on transferability (s.303(e)(6)(A)) for IFQs, which may have the unintended effect of prohibiting the design of limited access systems with the potential to achieve their legitimate objectives. These decisions would be better left to the constituents, the Councils, and NOAA. Many models exist for "comanagement" between constituents and governments entities.

Involvement of Constituencies in the Development and Implementation of Limited Access Systems

Substantial, and increased involvement of fishery constituencies in the policy development and implementation process is a critically important objective. However, care should be taken that such involvement preserves important public trust principles. One such principle is reflected in s.303(e)(1)(E), which prohibits any person or entity from acquiring an "excessive share" of any individual quotas, a goal that is clearly possible to achieve as demonstrated in several existing limited access systems. The decision framework should also not unreasonably hinder the broad consideration of potential alternatives. As presently written, s.303(8)(B)(b)(i)(1) and (2) may present such a hindrance, in prescribing that both the "submission" *and the "preparation"* of plans be subject to referendum procedures. The problem with requiring that *"preparation"* of such plans be subject to referendum is that until issues are identified, objectives set, and alternatives analyzed it is not clear that appropriate information will be available to constituencies in order to make informed judgments. "Submission", on the other hand, clearly could be subject to an informed referendum, assuming constituents have been fully involved in the process. There are many examples of where this has occurred in a manner satisfactory to the constituents.

The Appropriate Scope of Application for Limited Access Provisions

Regarding the potential for application of limited access provisions beyond the harvesting sector, it is important to review the principles and circumstances which lead to the consideration of access limitation to marine resources. The primary principle is that of protection of public trust resources and the circumstances are those that arise from open access in the harvest sector. The Magnuson-Stevens Act is clear in requiring that any restricted access provisions be tied to legitimate conservation purposes. I believe that many applications of access limitation to the harvesting sector can assist in protecting the public trust. However, applications (or extensions) of access limitation to the processing sector become one step farther removed from the basic needs of resource conservation. If some provision should be made to ameliorate the social and economic effects of the transition to a harvest sector limited access system on the processing sector, consideration should be given to addressing those provisions in a way that does not unnecessarily extend access limitations beyond their appropriate scope. Nor should any measure unnecessarily or inappropriately complicate the system design in a way that may violate the objectives or authorities of the Magnuson-Stevens Act. There are many possible alternatives for addressing such transition effects.

Summary

In general, I believe that S. 637 is well crafted, subject to the above remarks, and reflects many of the recommendations of the 1999 NRC report. Quoting from that report, "The individual fishing quota is one of many legitimate tools that fishery managers should be allowed to consider and use" (NRC, 1999, p–194). I would be pleased to answer any questions regarding this testimony, or to supply additional testimony or information.

Senator SNOWE. Thank you, Dr. Orbach.
Mr. Crockett.

STATEMENT OF LEE R. CROCKETT, EXECUTIVE DIRECTOR, MARINE FISH CONSERVATION NETWORK

Mr. CROCKETT. Good morning, Madam Chair and members of the Subcommittee. My name is Lee Crockett. I am the Executive Director of the Marine Fish Conservation Network. The network is a coalition of 102 environmental organizations and fishing associations. You heard from two of our fishing association members on the first panel. We are dedicated to promoting the long-term sustainability of marine fisheries and we appreciate the opportunity to present our views on recent legislation proposals to guide the development of individual fishing quota programs.

In 1996 Congress placed a 4-year moratorium on the establishment of IFQ programs because of concerns over the impact of these programs on both fishermen and the marine environment. Unfortunately, Congress was unable to address these concerns before the expiration of the moratorium. Thanks to the hard work of you, Madam Chair, and Senators Stevens and Kerry, Congress extended the moratorium for another 2 years to allow time to develop national standards for the design and conduct of IFQ programs.

The network strongly believes that explicit legislative standards designed to protect the marine environment, fishermen, and fishing communities must be established before the IFQ moratorium is lifted. To facilitate this process, we have developed a set of legislative standards for IFQ programs, which I have enclosed in my written testimony. The standards contained in both the Snowe and Kerry proposals would go a long way towards protecting the public interests if IFQ programs are established. While each proposal has its merits, each could be improved with language providing greater specificity and increased accountability.

My specific comments are outlined by our proposal. First, the network strongly believes that IFQ programs must acknowledge that fisheries are publicly owned, that IFQ's do not create compensable property rights, and that IFQ's are revocable. Quota shares must be of a set duration, we think not to exceed 5 years, after which time they may be renewed subject to satisfying defined criteria.

Senator Snowe's proposal relies on existing statutory language stating that IFQ programs do not create compensable property rights and are revocable. It also places a 5-year limit on quota shares. We strongly support those provisions. We believe they could be improved by creating more explicit review and renewal or reallocation procedures. This will guard against the review becoming perfunctory and make sure that the shares are not automatically renewed.

The Kerry proposal relies on the same language to make sure that they are not property and they are revocable. But rather than a time limit, it calls for a review every 7 years to determine if the quota shares should be renewed or reallocated. We do not agree with that approach because the burden is on the council to prove that the quota shares should be revoked, so it is not as strong as it could be.

Secondly, the network believes that IFQ programs should provide additional conservation benefits to the fishery. To accomplish this, we recommend that any decision to renew an IFQ program must be based on an evaluation of whether the shareholder is providing measurable improvements in avoiding bycatch, rebuilding overfished stocks, and protecting essential fish habitat.

The Snowe proposal requires IFQ programs to promote stable management of fisheries. We think this is a good first step, but greater specificity is needed in regards to what "sustainable management" means. We also think that quota shareholders must provide additional benefits or risk losing their quota shares, as verified by an independent council review committee.

The Kerry proposal moves in the right direction also by directing that councils and the Secretary consider the need to meet conservation requirements of the act with respect to the fishery, including reduction of overfishing and minimization of bycatch and the mortality of unavoidable bycatch. However, councils must be required to meet this standard for it to have any real impact. In addition, review committees must be established and charged with assessing whether this standard is met.

Next, we think IFQ fisheries must ensure broad participation by preventing excessive consolidation of quota shares and ensuring that a portion of each annual allocation is set aside for entry level fishermen and small vessel owner-operators. The Snowe bill contains a number of provisions that will protect fishermen and fishing communities. These provisions could be improved by providing greater specificity. For example, we recommend that Congress define "excessive share" in the statute.

The Snowe bill also allows the allocation of quota shares among categories of vessels and sets aside a portion of the annual harvest for entry level fishermen, small vessel owners, and crew members. These provisions are good. They could be made better if they were mandatory.

The Kerry bill also contains a number of provisions designed to protect fishermen and fishing communities. Again, we think these should be mandatory provisions.

Next, the network strongly believes that IFQ programs should be reviewed every 5 years to ensure that such programs are making improvements in avoiding bycatch, rebuilding overfished stocks, and protecting essential habitat before they are renewed. The Snowe bill establishes a national review panel to evaluate existing IFQ programs and provide comments on revising existing programs and the development of regulations. We recommend that the review and the regulations be completed before councils are authorized to establish IFQ programs.

Secondly, we recommend that the panel be established permanently and be charged with reviewing IFQ programs periodically. Finally, we suggest that only individuals with no financial interest in IFQ programs serve on the panel, to ensure the panel's independence.

The Kerry proposal would be improved if it required each council to establish committees to review shareholders, rather than IFQ programs, and IFQ programs should be required to be reviewed by

a national independent review panel to ensure they are meeting the act's conservation requirements.

Finally, the network believes that IFQ programs must recover all administrative costs, including the costs of enforcement, observer coverage, and independent peer reviews of the program. The Kerry proposal contains cost recovery provisions. The Snowe proposal does not and we think it should.

That concludes my comments and I would be happy to answer any questions.

[The prepared statement of Mr. Crockett follows:]

PREPARED STATEMENT OF LEE R. CROCKETT, EXECUTIVE DIRECTOR, MARINE FISH CONSERVATION NETWORK

Good morning Madam Chair and Members of the Subcommittee, my name is Lee Crockett, I am the Executive Director of the Marine Fish Conservation Network (Network). The Network is a coalition of 102 environmental organizations, commercial and recreational fishing associations, marine science groups, and aquaria dedicated to promoting the long-term sustainability of marine fisheries. Our member organizations represent nearly 5 million people. We appreciate this opportunity to present our views on individual fishing quota programs. I will focus my testimony on your legislation, the "Individual Fishing Quota Act of 2001," S. 637. I would also like to discuss the exclusive quota-based management standards that Senator Kerry proposed in S. 2973 during the 106th Congress.

I would first like to commend you and Senators Stevens and Kerry for your leadership in this area. Whether to allow the establishment of individual fishing quota (IFQ) programs, and if so, subject to what standards, is one of the most contentious issues in fisheries management today. In 1996, Congress placed a four-year moratorium on the establishment of new IFQ programs to allow for further analysis of these management tools. In the interim, it directed the National Research Council (NRC) to analyze IFQ programs. The NRC released its report in December 1998 and recommended that Councils be allowed to use IFQ programs provided that appropriate measures were imposed to avoid adverse effects from such programs. Unfortunately, Congress was unable to address these concerns prior to the expiration of the moratorium on September 30, 2000. Thanks to the hard work of you Madame Chair, and Senators Stevens and Kerry, Congress extended the IFQ moratorium for two additional years. The Network feels that this extension was appropriate because it will allow Congress adequate time to develop national standards for the design and conduct of IFQ programs.

We need national standards for IFQ programs for two reasons. First, IFQ programs are unique—they grant fishermen the exclusive privilege to catch fish, a public resource, before the fish are caught. Second, as we have seen with council implementation of the Sustainable Fisheries Act, unless Congress provides very explicit direction, council implementation will vary widely and will likely be inadequate. The Network strongly believes that explicit legislative standards are necessary to protect the marine environment, and fishermen and fishing communities. To facilitate this process, the Network developed a comprehensive set of legislative standards to insure that IFQ programs are properly designed and thus advance the conservation and management of marine fisheries.

The legislative standards contained in S. 637 and S. 2973 would go a long way toward protecting the public's interest if an IFQ program is established in a fishery. While each proposal has its merits, each could be improved with language providing greater specificity and increased accountability. I have organized my specific comments by the Network's seven IFQ program principles.

No Compensable Property Right

IFQ programs must acknowledge that fisheries resources are publicly owned, that IFQs are not compensable property rights, and that IFQs are revocable. Quota shares must be of a set duration—not to exceed five years, after which time they may be renewed subject to satisfying defined criteria.

S. 637 restates existing Magnuson-Stevens Act language explicitly stating that IFQ programs do not create a compensable property right and that IFQs are revocable. It also places a five-year limit on quota shares. We strongly support the five-year limit on quota shares. However, we believe that the bill could be improved by creating more explicit review and renewal or reallocation procedures. In order for

the five-year limit to be meaningful, the Network strongly believes that there must be a very real chance that quota shareholders could lose their shares if they fail to comply with all aspects of the IFQ program. If the review becomes perfunctory and shares are automatically renewed, they will take on the trappings of property despite the Magnuson-Stevens Act language to the contrary.

S. 2973 relied on existing Magnuson-Stevens Act language stating that IFQs are not property and are revocable. It did not contain a time limit on quota shares, instead it called for a review every seven years to determine if the quota shares should be renewed or reallocated. The Network feels that this procedure is not as strong as the one contained in Senator Snowe's bill. The Kerry proposal would be more likely to result in a rollover of quota shares because the burden is on the council to prove that the shares should be reallocated.

IFQ Shareholders Must Provide Additional Conservation Benefits to the Fishery

Advocates of IFQ programs often tout their potential to enhance conservation. The argument goes that stewardship of the resource will be enhanced because the value of the quota shares will be linked to the health of the resource. Therefore, the quota shareholder will have a financial incentive to conserve the resource. The Network does not ascribe to the theory that conservation will automatically be enhanced because an IFQ program is established. We believe that IFQ programs should be required to provide additional conservation benefits to the fishery. To accomplish this, we recommend that any decision to renew an IFQ share must be based on an evaluation of whether the shareholder is meeting the requirements of the IFQ program and providing additional and substantial conservation benefits to the fishery. Additional and substantial conservation benefits are scientifically measurable improvements in avoiding bycatch, preventing high-grading, reducing overfishing, rebuilding overfished stocks, and protecting essential fish habitat.

S. 637 moves in the direction of requiring IFQ programs to provide additional conservation benefits, by requiring that programs include provisions to "promote sustainable management of the fishery." While this is a good first step, greater specificity regarding the meaning of sustainable management is necessary. We also believe that quota shareholders should be required to provide additional conservation benefits. Quota shares held by individuals who are not improving conservation should not be renewed.

S. 2973 moved in the right direction when it directed councils and the Secretary of Commerce to "consider(s) the need to meet the conservation requirements of the Act with respect to the fishery, including the reduction of overfishing and the minimization of bycatch and the mortality of unavoidable bycatch." However, for this provision to have any real impact, councils must be required to meet this standard.

Protection for Individual Fishermen and Fishing Communities

To ensure that IFQ fisheries have broad participation, limits must be established to prevent excessive consolidation of quota shares. Preference should be provided in initial allocations to fishermen who can demonstrate a record of conservation-minded fishing practices, are owner-operators, and have long-term participation in the fishery. Each IFQ program must ensure that a portion of each annual-allocation is set-aside for entry-level fishermen and small vessel operators.

S. 637 contains a number of provisions that will help to protect fishermen and fishing communities. These include much-needed requirements to provide fair and equitable allocation of quota shares and a directive to minimize negative social and economic impacts of IFQ programs on coastal communities. These provisions could be improved by providing greater specificity. For example, the bill requires IFQ programs to include "provisions that prevent any person or entity from acquiring an excessive share of individual quotas issues for the fishery." We recommend that Congress define excessive share in statute to not exceed 1 percent of the total quota shares. To recognize the need for regional flexibility, councils could exceed this limit if there are a small number of participants and the increase would not be detrimental to other quota shareholders.

We also note that S. 637 directs councils to "take into account present participation and historical fishing practices in the fishery." Again, this is a good first step. However, we recommend that councils be specifically excluded from basing the initial allocation of quota shares on catch history. We believe that using catch history will reward the largest fishermen at the expense of small fishermen. Additionally, we believe that giving the biggest shares to the biggest fishermen could reward those who have caused problems by using large, non-selective, and/or habitat damaging gear. Disallowing the use of catch history will also provide a disincentive for fishermen to fish rapaciously in order to establish catch history when an IFQ pro-

gram is in the planning stages. Additionally, we recommend that the initial allocations reward fishermen who have a demonstrated record of conservation-minded fishing practices.

Finally, S. 637 authorizes IFQ programs to include provisions that allocate quota shares among categories of vessels and set aside a portion of the annual harvest for entry-level fishermen, small vessel owners, or crewmembers. Once again, this is a very good first step that could be improved by making these provisions mandatory.

S. 2973 contained a number of provisions designed to protect fishermen and fishing communities. These included provisions to establish a fair and equitable initial allocation, consider the allocation of a portion of the annual harvest to entry level fishermen, consider the social and economic impacts of IFQs, and consider the effects of excess consolidation. These provisions needed to be mandatory to make them more effective.

IFQ Programs Must Provide Additional Conservation Benefits to the Fishery

The Network strongly advocates a periodic review of IFQ programs every five years. Decisions on whether to renew the program and how to improve it should be based on the outcome of that review. Review criteria should include additional and substantial conservation benefits to the fishery, including avoiding bycatch, preventing high-grading, reducing overfishing and rebuilding overfished stocks, and protecting essential fish habitat.

As I discussed above, S.637 contains language requiring that IFQ programs promote "sustainable management of the fishery," which needs further clarification to effectively promote conservation. The Network recommends that fisheries subject to an IFQ program, at a minimum, be required to satisfactorily meet all of the conservation requirements of the Magnuson-Stevens Act. In particular, optimum yield should be set below the maximum sustainable yield to guard against overfishing, buffer against scientific uncertainty, and protect the ecosystem. Bycatch should be reduced over time to insignificant levels, and damage to essential fish habitat should be minimized. Additionally, an independent review of the program is necessary to insure that conservation is enhanced.

S. 2973, as discussed above, contained of number of conservation provisions that should be mandatory. It also contained a requirement that each council establish a committee to review the council's IFQ programs to ensure the programs are meeting the requirements of the Magnuson-Stevens Act, including the conservation requirements. The Network recommends that the Secretary establish a national review panel to review IFQ programs. We feel that a national panel is necessary to ensure a truly independent review of how effective IFQ programs are at meeting conservation objectives.

Independent Review of IFQ Programs and Shareholders

A national IFQ review panel, consisting of individuals knowledgeable about fisheries management, but with no financial interest in any fishery, should be established to review IFQ programs. In addition, each fishery management council should establish and maintain an Individual Fish Quota Review Panel, consisting of individuals with knowledge in fisheries management, but with no financial interest in an IFQ program, to conduct reviews of performance of IFQ shareholders.

S. 637 establishes a national review panel to evaluate success, costs, and economic effects of existing IFQ programs. The panel's comments are submitted to the councils and the Secretary for the revision of existing IFQ programs, and the development of IFQ regulations. We have several recommendations to improve this provision. First, it seems that S. 637 authorizes the development of IFQ programs while the panel is studying existing programs and the Secretary is developing regulations. This would allow the development of IFQ programs that are inconsistent with the new regulations. We recommend that the panel conduct its study and the Secretary promulgate regulations before councils are authorized to establish IFQ programs. Second, we recommend that the panel be established permanently and be charged with reviewing IFQ programs periodically. Finally, to ensure that the panel's reviews are independent, we suggest that individuals with financial interests in IFQ programs be prohibited from serving.

S. 2973 required each council to establish an independent review panel to make recommendations for development, evaluation, and changes to the council's IFQ programs. Appointments to the committee included a broad spectrum of interest groups and IFQ holders were prohibited from participating. These panels have many good aspects, but should be charged with reviewing individual quota shareholders. As stated above a national panel should be charged with reviewing IFQ programs.

Recovery of Costs

Because IFQ shareholders are granted the exclusive privilege to catch fish, we believe that IFQ programs must recover all administrative costs, including costs of enforcement, observer coverage, and independent peer reviews of the programs. Additionally, review of IFQ programs depends on good data and adequate funds to carry out the reviews. Cost recovery will ensure that the councils and the Secretary have the funds necessary to carry out this important mandate.

S. 637 should be amended to include a provision to require cost recovery.

S. 2973 contained a provision to cost recovery that was very similar to the Network's proposal.

Reserve a Portion of the Catch to Protect Ecosystems

IFQ programs must provide the opportunity for allocation of quota shares to entities that do not intend to catch the fish, but instead to reserve the quota share for ecosystem purposes. This reserve portion would serve as a buffer against scientific uncertainty.

S. 637 does not contain a provision that allows individuals to buy quota shares without fishing them. In fact, the bill prohibits this practice by requiring individuals to engage in fishing three of any five consecutive years or risk having their quota shares revert to the Secretary. This prohibition should be removed from the bill.

S. 2973 contained a provision that limits the allocation of quota shares only to individuals who directly participate in the fishery. This prohibition should also be removed.

Finally, I would like to commend a provision that is in both bills, but is not contained in the Network's proposal. Both bills contain requirements for super majorities of eligible permit holders to endorse an IFQ program before it can be established. We feel that this is a fair and equitable means of insuring that an IFQ program has broad support among affected fishermen.

In summary Madame Chair, you and Senator Kerry are to be commended for introducing legislation that if enacted would provide a badly needed legal framework for IFQ programs. If the two proposals were combined and made more specific as recommended above they would go a long way towards ensuring that both fish and fishermen are protected.

Thank you again for providing the Marine Fish Conservation Network with an opportunity to presents its views on IFQ programs. I would be happy to answer any questions you or other Members of the Subcommittee may have.

Senator SNOWE. Thank you. I want to thank all of you for your presentations here today. I think it will be helpful to this process of determining what essentially will be critical to further shaping this legislation. Obviously, as I think you heard from the previous panel, there still are a diversity of views with respect to the varying issues. There are a number of issues involved in the IFQ program.

Let me start with the whole issue of transferability. I know you mentioned, Dr. Sutinen, that without transferability you devalue the IFQ program, and IFQ's will be rare. I have also included sunset legislation because there are some concerns about what the direction or outcome would be of an IFQ program. For example, as you heard previously, there is concern about the consolidation of interests in the hands of a few, the concentration of it; and also whether or not an IFQ is working. To what extent can we have control over a program that may not be working well.

So that was the concept behind the sunset provision in this legislation. Now, I know that maybe 5 years may not be long enough for those who are making the business decisions and for long-term decision making. But in the final analysis, it was meant to provide some ability for control in the event that the program is not working well or that you do see the shares ultimately in the hands of a very few.

Dr. SUTINEN. In looking at the evidence with the implementation of IFQ programs around the world, most of them—not most, but many of them—initially prohibited trading. Just like our fishermen, they are concerned and the communities are concerned about the disruption and consolidation. Almost immediately, however, the gains from trade are perceived by the players in the process and they begin to put pressure on, whether it is the legislature or the managers, to relax those restrictions.

I think it is very logical to start out in many cases with these restrictions. But in other cases, particularly new fisheries where there are few players, they may not be necessary. But set up a framework whereby they can be modified and relaxed flexibly, immediately if necessary, if appropriate, maybe 5 years in some cases, maybe longer in others, maybe never. Some fisheries still have nontransferable quotas.

Does that help answer?

Senator SNOWE. Yes, it does, yes.

Dr. Orbach, what is your comment on that? I know you are opposed to the sunset provision, but how else, how better do you address the question of potentially an IFQ not working well? I know we could subject the program to review by the Secretary of Commerce, the Department of Commerce. But as we have seen presently with the review of fishery management plans, it has not worked well. It is grappling with the bureaucratic aspects of that kind of decision making once you remove it from the council or the area of jurisdiction for the fisheries, and that is a problem. We hate to remove it from the local area as much as possible, because it does get involved in the Federal bureaucracy. We have seen that in our past experiences with the management plans of the fisheries.

Dr. ORBACH. I understand that. Rather than say I am opposed to them, I simply think people ought to be informed about the consequences of having such a provision. Now, if you are concerned with review and critical decisionmaking about how the program is working, there are a number of ways to do that. There is a system that has been designed down in Australia called the drop-through system, where in fact the rights you purchase are for 20 years with overlapping systems that come into play and decisions that are made to stay in the system or to transfer to a new redesigned one.

So there are other ways besides strict sunset provisions to take this into account. I think the important point is that if you have any kind of a decision time line, that it is clear how you are going to act before that deadline occurs. What is it you are going to monitor? How is one going to decide whether something is working or not? What data and information are you going to need to give people reasonable expectations about how the system is going to work?

The other thing about a sunset provision is that there is sort of a presumption there that you may actually want to stop it and forget the whole thing. I would simply point out that the history of these systems worldwide is that nobody has ever decided that because, as Dr. Sutinen pointed out, they by and large work to do what they were intended to do.

Senator SNOWE. Thank you.

Mr. Crockett, you mentioned a national review panel or an independent review panel for the program. Are you seeking to exclude the fishermen from that panel? Would that be your intention?

Mr. CROCKETT. No, we are not seeking to exclude fishermen. We are just seeking to exclude people who have a direct financial stake in IFQ programs, so that they are independent.

If I could, I would like to talk about transferability——

Senator SNOWE. Because generally the fisherman do have a financial interest. The owners of the fishing vessels generally do. So obviously you would be excluding them.

Mr. CROCKETT. I meant specifically a financial stake in an IFQ program. So they would not be reviewing their own programs to determine whether they should continue or not, so they would be a step removed. But we are not suggesting that fishermen not be excluded, just fishermen with a direct financial stake in that IFQ program.

If I could just comment on this, we do not have a position on transferability, but we certainly feel that there needs to be—if there is transferability, that you absolutely have to have a hard sunset that has some teeth to it. I think you heard testimony in the earlier panel where one of the witnesses said that you could not change the halibut-sablefish fishery because lots of money had changed hands, millions of dollars had changed hands. That is precisely the problem with this, that if you want to make changes to it, you want to make midcourse corrections, it is going to be very difficult if lots of money has changed hands. You can have all the law you want saying that this is not property, it is revocable. It is going to take on the trappings of property.

Senator SNOWE. Interesting point.

Dr. Orbach, Dr. Sutinen, do you think that we should have an independent review panel of some kind to examine the performance of the IFQ programs?

Dr. ORBACH. I personally think that is a very good idea. I think I have every faith in the council system, but there are only a certain number of people who can participate in it effectively at any given point in time. I think functions such as the National Academy review—there are a number of ways to set up reviews such as that and to ensure their objectivity. I think it is a very good idea.

Senator SNOWE. Dr. Sutinen?

Dr. SUTINEN. I think that is a logical direction to go in. But I would like to see a set of criteria laid down early on as to what is going to be used to pass judgment. There are some basic things in the Magnuson–Stevens Act and elsewhere you could build on, of course: serving the interest of the resource, fishing communities and a number of things. As long as those are laid out and are objectively measurable, I think a review is a good idea.

Senator SNOWE. Thank you.

Senator Stevens.

Senator STEVENS. Mr. Crockett, I am not sure I like what I am hearing. It seems to me you are suggesting a nationalization of the regional councils, a permanent review before the IFQ's go into effect, and a review of people who do not have any interest in the IFQ's as we go along. That is not this system. It is not the Magnuson–Stevens Act, I will tell you. I will totally oppose bringing to

Washington and to some national review board the control over regional council decisions. I think you better back off, because that is not what this is all about.

This is about the independence of regions in terms of determining their own fate. That is worse than bringing it back to the NSF. You might as well just repeal Magnuson–Stevens Act as follow your suggestions. No offense meant, but I just do not agree with you.

Dr. Orbach, it seems to me that you have got some basic suggestions that do make sense, and that is to make sure that these systems are working in a post-approval of an IFQ system after a period of years to review that, to see how this is working in comparison to other areas and to offer advice to the councils in terms of modification of plans or review of the socioeconomic issues.

Am I understanding you right? Yours is not before the IFQ goes into effect, but to review the history of it after it comes into effect?

Dr. ORBACH. Yes, that is right. I think that we need to have our objectives and criteria clear and we need to have some experience to go on here. We cannot possibly understand all the things that might happen when these systems actually unfold. We need to monitor them very carefully and to have a way to adapt our management to make sure we are achieving our goals as we go along.

I think there are ways to do that. I think participants in the system who have a vested interest have a natural role. I think some people who do not have any vested interest have a natural role as well. I would like to see both those constituencies involved somehow in the process, not one to the exclusion of the other, though.

Senator STEVENS. I agree, not one with a veto on the other, either.

Dr. Sutinen, in terms of what you are saying, as I understand it, that you feel that the IFQ is one of the most valuable tools we have for fisheries management under our system of economics?

Dr. SUTINEN. That is correct, sir.

Senator STEVENS. Do you believe that the IFQ's should have value? Should they really become certificates of value that can be transferred just for an investment purpose?

Dr. SUTINEN. With value, good things happen. As an economist, when I evaluate the economic performance of industry sectors, etcetera, things that have value do good things. It is for that reason that I think if an IFQ system allows for value to build up in the form of shares and elsewhere, it is going to do good things to our fishing communities.

Senator STEVENS. So just to make sure we understand now, if I have an IFQ in fishing for a particular species in Alaska and Dr. Orbach's got a bigger and better boat and he wants to buy my IFQ and I can go sit on the beach and let him fish from my IFQ, that is really what you want us to do?

Dr. SUTINEN. I am not telling you what to do, sir. I am saying that if you do that greater value will be generated. Do you understand? Do you understand what I am saying?

Senator STEVENS. And I will have a good life and he will still be fishing, but what happens to the fishery if we have the capability of consolidating the right to harvest fish because of value of the certificate issued by the regional council?

Dr. SUTINEN. Certainly. If too much consolidation occurs, that is a bad thing and we have laws to prohibit that or at least restrict the degree of consolidation in any given industry, because we get market failure and in those cases markets do not serve the best interests of society. So we seek instead to build a competitive system where you have a large number of small players that are playing or operating on a common level playing field.

Senator STEVENS. Well, respectfully, that worries me, too, because we designed this to protect the fish and not to protect the value of some investment in trying to either harvest the fish or process the fish. We have just gone through the AFA. Are you familiar with the American Fisheries Act?

Dr. SUTINEN. A little bit, sir.

Senator STEVENS. That was a cooperative approach, not an IFQ. It was a cooperative approach, and it has worked very well. It has protected the species and we are coming back to a normal concept with regard to our ability to assure reproduction.

Do you believe we should put economics above the future reproductive capability of the species?

Dr. SUTINEN. I think they are compatible. In my written testimony I go on at some length about how I think community-based systems have a lot of value. In other words, group——

Senator STEVENS. I noticed that, too.

Dr. SUTINEN. Group quotas as opposed to individual quotas. I think that system can work well. But when people see value in what they hold, that builds up their conservation motive, their stewardship of the resource. They then have a stake in the future outcomes of the resource, and therefore you do not put value over fish. They are compatible.

Senator STEVENS. Would your economic approach permit us to put a limit on the amount of the total allowable catch any person could acquire?

Dr. SUTINEN. Certainly.

Senator STEVENS. Thank you.

Thank you.

Senator SNOWE. Thank you, Senator Stevens.

Senator Kerry.

Senator KERRY. Thank you, Madam Chairman.

Dr. Sutinen, you state in your testimony that an open and transparent process is needed to ensure institutional legitimacy, credibility, and trust, with which I agree completely.

Dr. SUTINEN. Yes, sir.

Senator KERRY. But you then say: We in the U.S. have not yet designed a process that satisfies these criteria. Can you explain why we have not yet had a fair allocation process within an IFQ fishery? What is the rationale for that?

Dr. SUTINEN. I wish I could. I really can not. We found in looking at this initial allocation process in many, many fisheries that it has been done in many different ways, and one size does not fit all. Certainly having it open means that all interested parties can participate, whether they are processors, fishermen, environmentalists, or the like. Yes, the pain is great. The amount of time to negotiate and arrive at some acceptable solution, that is quite arduous.

But unless you have the procedures in place that people perceive as being legitimate, in your terms fair, and yield just outcomes or procedures, then the institution is weakened and it is not sustainable over time.

Senator KERRY. Sure. But you have just pointed out the differences in different places. Obviously there are different approaches, as I mentioned in my opening comments. But do you think that there is something we can do legislatively or through oversight that is going to ensure that fair initial allocation process?

Dr. SUTINEN. When I travel around New England and talk to fishermen, they feel removed from the council process.

Senator KERRY. Now?

Dr. SUTINEN. Right now, right.

Senator KERRY. I agree.

Dr. SUTINEN. They shake their heads and they are, frankly, quite upset. They tell me time and again the system is broken.

Senator KERRY. I hear it. We both hear it. We all hear it.

Dr. SUTINEN. I guess I am a little disappointed. Maybe you plan to really examine that system and think about fundamental changes to the way we go about managing our fisheries. The councils—the principle behind the council notion, move things out to the region, is a good one. In the work I have done to date, we have not gone far enough in that decentralized or decentralization of our management structure.

Senator KERRY. When you say that, you mean we need to decentralize further even than the council?

Dr. SUTINEN. That is correct, if we want a legitimate system that is sustainable over time and capable of producing high value.

Senator KERRY. I am really left wondering about that, let me tell you. Would you then design a system that is based on a fishery per se, and how would you join the multiple jurisdictions? What happens, for instance—when fishermen from a number of different States approach the Georges Banks.

Dr. SUTINEN. That is right.

Senator KERRY. Just to pick that as an example, or in California with the tuna in the Eastern Tropical Pacific. It seems to me you have to get some scope of region in order to be able to manage the stock of a particularly large fishery that is inviting to people from several jurisdictions.

Dr. SUTINEN. This may take some time to explain, but let me try to do it in just a few seconds. First of all, I would not draw hard and fast permanent boundaries on these things. Instead, I would set up institutional arrangements where the players can merge among themselves. If you think for a moment about our businesses in this country, they grow and diversify, they merge, and they decompose over time. We have institutional mechanisms for that to occur in order for good things to happen.

I am thinking that in the same sense you could have communities of interests, say New Bedford that might start out, and then a subset of them may join with some from the Mid–Atlantic for specific purposes. If we have an institutional structure that is flexible——

Senator KERRY. What would be the driving force for them joining, economics?

Dr. SUTINEN. Yes.

Senator KERRY. Well, if the driving force is economics, you are going to have greater consolidation and more money making an impact.

Dr. SUTINEN. Not necessarily.

Senator KERRY. Why?

Dr. SUTINEN. It depends on what style——

Senator KERRY. It seems to me if you leave freedom of the market unchecked, that is an invitation for the larger investor. We had that kind of problem with North Carolina boats, with New York investors supporting them, coming up to our fishery. That just accented the problem of too much money chasing too few fish.

Dr. SUTINEN. Well, first of all, by doing this you create a stewardship in the resource.

Senator KERRY. What creates the stewardship?

Dr. SUTINEN. Because you are giving them some degree, this group, exclusive access to using the resource over time.

Senator KERRY. But if the group is an economically formed group, it does not necessarily have ties to the community. It does not necessarily have ties to the particular——

Dr. SUTINEN. You would design it that way.

Senator KERRY. Well, if you do it is going to be one hell of a manipulated market.

Dr. SUTINEN. Not necessarily, not necessarily. This is being done in some communities. For example, the producer organizations in Europe, some of them work under the total quota. Some of them divide that up among individuals so the members of the quota have individual quotas themselves. In other cases they fish it in different ways. They buy quota from other producer organizations, etcetera.

Something along those lines, but it could be organized differently, with players other than the harvesters involved in these, to serve the community's interests.

Senator KERRY. Well, that is worthy at least of some staff analysis and backdrop. The difficulty with it is that obviously working out the democracy of these councils is complicated. It has got to be a manageable structure, it has got to be a manageable number. We have tried to work out areas of interest. But obviously we run into a lot of fishermen within each of the councils who feel like they are not represented or the commercials are more highly represented than any of the others, or that a particular commercial interest is even more represented than the other particular commercial interests and they do not have as many votes. Then you run into this thing. We run into it between Maine and Massachusetts and New Hampshire and so forth.

It is hard to make it a democratic process that is truly representative. Through the years, we have really tried to decentralize it as much as possible, as you are saying. But then the result has been that the more decentralized it gets, the less coordinated it becomes and the less you ever get a decision made. That is why we ultimately had to insert the Secretary into the process, because we were seeing stalemate, no decision, status quo, gridlock.

Dr. SUTINEN. May I comment?

Senator KERRY. Please. That is the purpose.

Dr. SUTINEN. First of all, I do not want to imply that I am proposing another layer of government here. I am not. Instead I am proposing a set of guidelines and provisions that allow for these governing institutions to emerge from the bottom up.

I am currently working with some local lobstermen who want to organize and carry their case to first the State legislature, and they encounter all sorts of barriers. They work hard for many, many months, sometimes years, to come to an agreement on a program, and the law, the institutions around them—forming to work together to form some effective governing structure, there is all kinds of barriers to that.

What I am talking about is facilitating that. Some countries have rewritten their legislation to facilitate these organizations to grow and prosper.

Senator KERRY. Well, we certainly owe it to ourselves to look at what those countries are doing and try to measure it, and we will do so.

Let me ask the other members of the panel and all of you just very quickly, because I unfortunately have a slot on the floor. I need to go over and speak on something. But would you share with us your understanding of the role of IFQ's in reducing and promoting bycatch? Any thoughts on that, Mr. Crockett or Mr. Orbach? Are they better or worse than other management programs in reducing bycatch?

Mr. CROCKETT. There are concerns with IFQ programs with what is called high-grading, where fishermen will only keep the most valuable fish and discard the less valuable, because they have more time to catch fish. So that is a bycatch issue that needs to be guarded against and why we think there needs to be observer coverage, industry-funded observer coverage in IFQ programs.

Senator KERRY. Well, you heard the former panelist say the industry cannot afford it.

Mr. CROCKETT. I heard others from Alaska, where they are funding it, who said they could certainly depend on the industry.

Senator KERRY. It might depend on the kind of catch you get and the price of that catch, too, and your costs of fishing.

Mr. CROCKETT. Exactly. We think because you are providing the exclusive privilege to catch these fish, that that is a different scenario than the current practice of open access fisheries. So because you have that exclusive privilege, you should be contributing to the management of that fishery.

Senator KERRY. I suppose that should simply be passed on and reflected in the cost of the fish? What if the market does not respond that way? I mean, when the fishermen come in at an auction and the price is paid, it is not a pass-on in the same way as it might be in other kinds of productions.

Mr. CROCKETT. The other alternative would be a government-funded program and we see how difficult that is right now to get money for observer programs. I think it is only recently that Congress has provided additional money, probably $4 million or so, for observer programs. We are trying to ensure that these are managed correctly and you need to generate some money to be able to do that.

Dr. ORBACH. Let me just comment briefly on the broader question of the environmental effects of fishing. There is some evidence in the systems that have been established that the IFQ's allow the fishermen more flexibility to deal with environmental impacts in their fishing, everything from ghost gear, enforcement effects, the ability to target on certain fisheries without having to sort of broadcast fish in short time frames.

So there are in fact some positive environmental impacts noted in many of these IFQ fisheries as well. The high-grading issue is an important one. It is a little difficult to monitor. There is also some evidence that high-grading is in fact not very economical as a phenomenon.

Senator KERRY. Well, thank you.

Again, I would like to read the record open if we could, Madam Chairman, just to follow up with the panel.

Senator SNOWE. You certainly can.

Senator KERRY. I thank you all.

Senator SNOWE. Without objection, it is so ordered. Thank you, Senator Kerry.

Just a few remaining questions. Dr. Sutinen, you referred earlier, in response to Senator Kerry's questions to the area councils and the management process and the considerable dissatisfaction that exists with that process. I would agree. That certainly is consistent with the views that were expressed during the course of the Committee's field hearings across the country in various regions. So it is well represented, unfortunately, in terms of how it is viewed.

Do you think that we should require the development of additional procedures in this legislation before we would proceed with IFQ legislation?

Dr. SUTINEN. Additional procedures regarding anything?

Senator SNOWE. Yes, the management of this program, reconfiguring the process in some way to make it more open, more responsive. I obviously included, for example, the double referendum initially to make the decisions about whether or not the council should proceed with developing an IFQ program, and then ultimately on the basis of what that program is all about, with a two-thirds vote. So that is a very high threshold in order for a program to even begin to be considered by the council, and then of course to be approved.

Dr. SUTINEN. I guess I would like to see some provisions that not only allow, but encourage the councils. There is some tendency right now in the New England Council to do—to encourage the councils to allow individual user groups, even sub-user groups, to formulate their own rules and within that context then either require or certainly encourage some sort of democratic decision-making process. When you get conflicting interests, such as say New Bedford and Gloucester, who cannot even get into the same room together and agree on anything, then you are going to have to devolve the process even further, so you get some common set of interests formulating some rules that are common to them.

But if you have a referendum process across the board in the region, I do not think you are going to get a two-thirds majority vote on anything. I do not care whether it is IFQ's or anything.

Senator SNOWE. So you think that two-thirds is too high?

Dr. SUTINEN. Yes, I do, because it is applied to a very large region with a lot of heterogeneous interests. If that rule were applied to, say, the southern New England fishermen prosecuting a certain species or groups of species, then that might work, that might be an appropriate tool for decisionmaking.

Senator SNOWE. Dr. Orbach, I know you indicated that you are opposed to having a referendum for the council to proceed with the development of an IFQ program. But is it not better to have the determination as to whether or not it is something that is supported by the industry, as opposed to having the council go through with considerable expense and time to develop such a plan? They need to establish, I think, a base of support before they can begin to develop a program.

As we have heard earlier, it is a very expensive effort in any event. It would be important to determine how broad the support is or how wide the opposition is with respect to going forward with such an idea.

Dr. ORBACH. Yes. I think that you used an important difference in the wording there. That is, not to decide to develop an IFQ system, but decide to consider an IFQ system. Now, in all the cases I am aware of the IFQ systems that have been implemented were actually proposed in the first instance by some constituencies of fishermen. That is, these things are not put in over the objections of fishermen. They have been put in with the support of fishermen, also the opposition of some others in the industry. But it has not been a black or white situation.

My concern about the up front referendum is that—and I have been involved in having fishermen say to me: Come help us think about these things. Jon used an important word. By the way, the solution to some of the questions Jon raised may not structural issues within the system, but ways to provide resources to the community outside of the system, to get together fully and think about these issues.

That is a very difficult thing to do, because everybody has to make a living, because the councils have hearings all over the place. What we have been able to do in many places is to facilitate, to bring the information to communities, to provide resources so that they can get together and talk with people with different experiences and different ideas from other places.

That process is very important. I think the problem with the up front referendum is these are very complicated issues. People actually do not know, cannot be expected to know, what they truly think about these things until they have had an opportunity to be in those kinds of forums.

Senator SNOWE. Further, you mentioned in your testimony that you are opposed to processors having the ability to acquire shares, quotas, under this program.

Dr. ORBACH. Now, there is that "oppose" word again. I do not oppose or support things. I point out the potential effects of one way of doing it or the other. I think the question with the processor issue in Alaska is whether we view it as a transition phenomenon or whether we view it as a design feature that needs to be incorporated into the long-term structure of the FCMA. That is the question.

If you view it as a transition phenomenon, there are many ways to help the issue of stranded capital with a one-time payment or whatever the issue is, without a change in the basic structure of the FCMA. My concern again is the farther you get away from the pure conservation objectives of the system, the more it becomes questionable whether something is within the authorities and the intent of the FCMA.

My reading is that the FCMA was not designed to regulate processing independent of a conservation objective. If that is an objective, it might need to be added as a structural new feature of the FCMA. I am neither opposed nor supportive of it. I simply want to point out those aspects.

Senator SNOWE. So we would have to include some design in this legislation to address what you are suggesting?

Dr. ORBACH. I would say that if you are getting into especially the two-pie system, where there is a separate allocation of processors, that would really require some serious thinking about a structural change in the FCMA to address the issue of even the basic justification for regulating processing, for example. That would have to be somehow built into the FCMA. It is not there now.

Senator SNOWE. Mr. Crockett, I notice that you are recommending that conservation groups should be able to obtain a share of quotas. Now, I would like to hear your rationale for that, because obviously that would be, I think, a very unusual approach, particularly for groups that obviously do not have a vested interest. They do in terms of the whole resource, but do not have the financial interest. So obviously, that would be opposed by many.

Mr. CROCKETT. Well, I think there are many examples in the terrestrial environment where conservation groups like the Nature Conservancy and others, for example, purchase land to set it aside to protect ecosystems. This would be very akin to that, where groups who do not intend to fish the resource would purchase quota shares and set it aside and not fish it.

In our proposal, we would say that if there are any fees assessed that those individuals who own that unused quota would pay the fees, and we feel because there is a fair amount of uncertainty in fishery management generally that this would serve as a buffer against that uncertainty.

Senator SNOWE. Dr. Orbach and Dr. Sutinen, how would you respond to that idea?

Dr. SUTINEN. I can see some value in allowing other interests to acquire shares, harvest right shares, because a lot of other interests have value. It is not market value, but it is value in the status of our fisheries. We have had some cases where environmental groups have, as Mr. Crockett points out, acquired land, sanctuaries and resources.

Senator SNOWE. Similar to a conservation easement.

Dr. SUTINEN. Once again, it gives them a long-term stake in the resource and it removes them from the political marketplace and puts them into the commercial marketplace.

Senator SNOWE. I think the difficulty is that the reason for going to the IFQ program to begin with, is because fisheries are a limited resource. There are only so many that are going to be able to par-

ticipate. There is only so much fish out there to catch. Therefore, adding an element or a dimension acquired by a group that does not have that financial interest obviously places a greater burden on the overall industry.

I understand the rationale, the predicate of your idea. I think the question is whether or not it should be done in this instance, because of the initial reasoning for going towards an IFQ program.

Dr. Orbach.

Dr. ORBACH. I think that everything is a political process within fisheries management and politics is not a bad word. It is just different values. So certainly you could build in a feature of different categories of ownership. I think the problem will be if in fact the purchase of quota share by non-fishing constituencies became a regular phenomenon, what you are essentially doing is subverting the design features of the FCMA. You are saying that, having made a reasonable judgment about how much fish it is appropriate to take out of the ocean for commercial purposes, you are allowing a downstream reassessment of that judgment.

That would be to me a design problem with the FCMA in general.

Senator SNOWE. Well, do you want to respond, Mr. Crockett?

Mr. CROCKETT. If I could just briefly respond to that. I think it is a recognition—and you held field hearings all over the country and I am sure you heard lots of criticism of the data that goes into fishery management, the stock assessments, the analyses, all those sort of things. It is just a matter of fact in our current system right now that there is a lot of error, and this just recognizes that and creates a buffer so that if we are wrong in our assessments of the health of the resource and the amount of resource we are divvying up, we have a buffer, we have a cushion to guard against that.

Senator SNOWE. That was one of the reasons why I proposed the sunset, as another way of getting at that problem as well.

Mr. CROCKETT. Right, and we strongly support that sunset.

Senator SNOWE. Well, I thank you very much for being here today and for your very thoughtful and illuminating testimony on this challenging issue, to say the least. But you have been very helpful in elaborating on some of the key questions that we will have to address on the Subcommittee and beyond.

So I thank all of you very much for being here today and for testifying and for your contributions to this process. Thank you.

This concludes our hearing. Before we leave today, I ask unanimous consent that the hearing record remain open for 10 legislative days so the Subcommittee may accept additional statements and questions from Senators, as well as any other information that the Subcommittee may want to include in the hearing record. Without objection, so ordered.

The hearing is adjourned. Thank you all for attending.

[Whereupon, at 12:03 p.m., the Subcommittee was adjourned.]

A P P E N D I X

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO PATTEN D. WHITE

Question 1a. How can new IFQ programs ensure that quota shares will not be consolidated into the hands of the largest fishing interests?

Answer. A maximum percentage could be established on a fishery by fishery basis depending on the size of the fishery and the number of people who have historically been in the fishery.

Question 1b. Should legislation specify penalties if share caps are exceeded?

Answer. S. 637 states that a Council has the authority to include the provisions which prevent the issuance of excessive shares. If an individual or corporation obtains excess quota under false pretenses, that quota should be revoked. Otherwise, it is the responsibility of the Council administering the program to ensure that quota allocations are not exceeded. I don't see that legislation is needed for this.

Question 2a. Would I support allowing the environmental community to lease quota for a limited time period?

Answer. No. The proposal I read from the MFCN requested that programs must provide the opportunity for allocation of quota shares to entities which do not intend to fish. I do not agree with that. If environmental conditions are reducing a stock or it's ability to reproduce, that condition must be dealt with by the appropriate governing body. If a species is listed as endangered, there should be no quota.

Question 2b. Would this be a way to compensate fishermen while giving NMFS time to address a pressing problem?

Answer. If an environmental group were able to lease a quota for a limited time, it could be advantageous to the fishermen and merit further discussion. However, I don't understand what incentive there would be for an environmental group to do this. If a stock is threatened and requires a reduction in effort, would it not be the responsibility of the respective Council to reduce the amount of quota available?

Question 3a. What measures would I recommend to ensure that changes can be made to an IFQ program?

Answer. It would be difficult for me to respond to this question without hearing a lot more public input.

Question 3b. Without a sunset, can an IFQ program be terminated?

Answer. Depending on how an IFQ is designed, it could be very difficult to terminate, even if it has a sunset. A sunset would help to ensure that its value doesn't become excessive.

Question 4a. How can you ensure that any IFQ will enhance safety?

Answer. You can't. Most fishermen fish when they can realize the highest economic gain. That may or may not be during good weather. Fishermen need to remain flexible.

Question 4b. Do I have any recommendations?

Answer. There needs to be more outreach and education.

Question 5a. If the Coast Guard budget is reduced, does it change my position on ITQ's?

Answer. No. I still don't support them. This situation would only reinforce my position.

Question 5b. Would such a reduction require additional safeguards?

Answer. If enforcement is reduced, alternate management measures must be explored.

Question 6a. Do I believe that an area management program such as that used in the lobster fishery could be used to develop an area quota program?

Answer. In Maine we have chosen, for the most part, to limit the number of people in an area who are allowed to harvest lobsters and have restricted their ability to catch them through trap reductions, not the amount they may harvest. According to Webster's definition, that is a form of quota. An area quota program would be very difficult to implement and would run the risk of introducing all the bad, species specific incentives of single species management. We see area management as a way

to begin evolving towards a multiple species, ecosystem approach to fisheries management.

Question 6b. Would an area quota be more useful and less harmful in New England?

Answer. An area quota is not likely to be helpful and, in many ways, could be very harmful to the development of stewardship in area management. There are circumstances under which quotas might be useful. However, if you get the incentives right—which we believe is happening with area management—then users will find it in their interest to adopt quotas if quotas are appropriate for the conditions in their fishery. Imposing quotas without regard to the kinds of governance processes being set up with area management will simply repeat all the errors of the past. I don't see area management as an easy process, but I do think it creates the right incentives to start us down the road to addressing a lot of ecological and ecosystem issues that get totally buried with ITQs and quotas.

Question 7a. Should any new IFQ program be set to a higher conservation standard than traditional plans?

Answer. No. You are correct. The standards are already established under the SFA.

Question 7b. Would this be appropriate?

Answer. The best reason to adopt a higher standard would be to create a disincentive to adopt new IFQs .

Question 8. Would I comment on the allocation issue?

Answer. It would take a long time for me to adequately address this issue. I will try to be brief. A fisherman is a fisherman, no matter what he, or she catches. There are many reasons why a fisherman leaves a certain fishery; health, age, status of a resource, economics. The majority of fishermen are small boat, near shore fishermen. Their economic stability and future security has been dependent on their ability to switch from one fishery to another and still come home at night. They are quickly loosing that ability by being forced to fish for species chosen through qualification criteria that are usually inappropriate.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN F. KERRY TO PATTEN D. WHITE

Question 1a. Is a buyout a sensible use of government funds?

Answer. No, to date buyback programs have a bad track record, doing little to reduce capacity in fisheries because they allow people to re-enter the fishery. The money allows these fishermen to upgrade and increase their efficiency. In the absence of knowing the details of a buyout program, it would be hard to think of a worse way for the government to use its funds than this. Buy-outs create all the worst kinds of incentives.

Question 1b. What are the problems or benefits?

Answer. Problems: Reducing capacity creates haves and have nots, inflates the value of remaining permits, creates windfall profits, erodes social structure of community, forces/encourages people to enter other fisheries. The capacity reduction proposal does not reduce the number of fishermen, it only reduces the number who can fish with a multi-species permit. When the government starts to hand out these kinds of windfall benefits it encourages people to enter the industry with much less forethought than they might use otherwise and, when things get tough, to stay in the industry far longer than they would have otherwise.

Benefits: Reducing capacity through a buyback program does provide financial gain to people who are not doing anything.

Question 1c. What does the public receive and how does one prevent windfall profits?

Answer. The public receives nothing unless there is a fee or tax on remaining licenses. Any buyout has the potential for windfall profits if the fisheries recover. What accelerates the windfall is implementation of quotas following a buyout program. Additionally, because of the prospect of the buy-out windfall or the ITQ windfall, policies like this create a strong and artificial lobby among fishermen for this kind of management regardless of the merits of the management process itself. Even if one ignores these perverse incentives it is hard to figure out what possible benefit the public might receive from a buy-out program.

One group of fishermen—those bought out—would receive as much as or more than they might expect from an ITQ (or they would not willingly agree to a buy-out). Those who refuse a buy-out and stay in the fishery would obtain an ITQ (in total) windfall larger by an amount equal to what the government paid out in the buy-out program. In other words, a buy-out program simply increases the windfall effect of ITQs at public expense with no conceivable benefit to the public interest.

Question 1d. Is a buyout or an IFQ better?

Answer. This question assumes that overcapacity is a problem. It is difficult to answer because it is difficult to define overcapacity and overcapitalization. There may be enough capacity to harvest every last fish, but this is not the economic decision criteria which determines who will fish for what and when. Fishing businesses must be diverse and flexible. I support neither a buyback program or IFQ program. They are a kind of self-fulfilling prophecy that will assure a conservation and economic disaster in one fishery after another.

Question 2a. Should fishermen in an IFQ pay a fee?

Answer. If there is to be an IFQ, fishermen probably should pay a fee. It would be an easier pill to swallow if they could see a benefit from it, as well as the right to fish, such as improved science and better enforcement.

Question 2b. What are the pluses and minuses of an auction vs a landing fee?

Answer. Auctioning off quota shares may be a reasonable way for the public to capture some of the resource value it transfers to holders of ITQs. In a sense the government creates and guarantees a cartel and all its benefits when it creates an ITQ system. It protects ITQ holders from competition and, at the same time, gives them exclusive access to a public resource.

Many of the problems of a one-time auction can be eliminated if resource rights are 'rolled over', say every five years, and re-auctioned. There is tremendous uncertainty in a one-time auction and, as a result, those who have better access to capital (or larger assets to post as collateral) are in a much better position to compete. For example, banks might be reluctant to lend the average fishermen money for a one-time auction because of the uncertainties about the operation of the program. People or companies with 'internal' capital resources don't face these problems. Rolling auctions reduce the uncertainty of the initial and all subsequent auctions and make it more possible for the average fishermen to compete successfully. An auction, depending on how it is set up, could be very unfair to those who have significant history but whose financial situation may preclude them from participating in an auction at any given time.

The landing fees may be a more fair method of capturing resource rent as each fisherman chooses to fish but they raise the issue of enforcement. If you assume there is no enforcement problem then the only difference between an auction and landing fees is the up-front payment required in an auction. But enforcement can be expected to be a major problem with both landings fees and quotas. ITQs, especially, set up very strong incentives for non-reporting—much stronger than under a regular quota or no quota because the boat gets 100 percent of the benefit of avoidance. In a regular quota any unreported catch benefits other boats as well as the cheating boat. There are some limited fisheries where ITQs and landings fees may be enforceable, but one should never underestimate the ingenuity of fishermen.

Question 2c. Is there merit to delaying fees?

Answer. Delaying the implementation of a fee schedule would help fishermen to participate in the fishery without an undue burden at this time.

Question 2d. Would this allow fishermen time to adjust?

Answer. Yes

Question 3. Should the Magnuson Act prevent quota based management?

Answer. My first answer would be yes, if the question is whether Magnuson should prevent the imposition of quotas that would essentially destroy area management. I see area management as a way to begin evolving towards a multiple species, ecosystem approach to fisheries management.

If the question is, should a management agency be precluded from using any form of quota based management, then my answer would be no. Many of the lobster management zones in Maine have a quota/cap on licenses. Individuals have a quota on number of traps they can fish. Neither are transferable and there are not quotas on how much fish may be harvested. Quota based management is just one tool in the fisheries management tool box.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO JOE PLESHA

Question 1. Your testimony stated that the reasons for allocating IFQs to processors are the same as those for harvesters. Those in favor of IFQs often argue that they will result in improved conservation; increased safety at sea; a reduction in overcapitalization; and economic efficiency. How would processor quota shares improve conservation and increase safety for commercial fishermen?

Answer. Rationalizing fisheries through a quota-based system and allocating IFQs may result in improved conservation, increased safety at sea, reduction in overcapi-

talization, and economic efficiency. But adopting an IFQ fishery management system would achieve those results no matter who received the allocations of IFQs: whether the recipient is a group of coastal communities through a CDQ-type program, vessel owners under a harvester-only quota program, processing plant owners under a processor-only quota program, or the general public through a simple auction of IFQs to the highest bidder.

If the *only* goals of Congress are to improve conservation, increase safety at sea, reduce overcapitalization and achieve economic efficiency, I would recommend that the Magnuson-Stevens Act be amended to require all IFQs be auctioned to the highest bidder so that the general public receives the benefit from the fishery resources of the United States.

Congress should be aware, however, that such an auction would have a huge impact on the capital investments made in the harvesting and primary processing of open access fisheries where the capital investments are both relatively durable and specific to the fishery involved.[1] The owners of this "non-malleable" capital would suffer enormous losses to the value of their existing investments during the transition between the open access and privatized fishery equilibrium conditions. For that reason I believe investors in both harvesting and processing capacity need to be included in the initial awarding of rights.

The purpose of the "two-pie" system is to assure that investors in both harvesting and processing capacity do not have the value of their investments taken from them and that each sector be treated equally as the fishery is rationalized.

Adoption of a "two-pie" harvester and processor quota system does nothing to improve conservation, increased safety at sea, a reduction in overcapitalization, and economic efficiency above and beyond that achieved by a "one-pie", harvester-only, quota-based system. But please understand that the reverse is also true. If you were to rationalize the fishery by allocating *only* processing quota based on the processing history of a particular species, you would achieve improved conservation, increased safety at sea, a reduction in overcapitalization, and economic efficiency. Under this hypothetical processor-only quota system, there would not be any additional improvements in conservation, increased safety at sea, reduction in overcapitalization, or economic efficiency by adding a "two-pie" harvester quota along with the processing quota. Under my hypothetical example, adding harvesting quota shares to the processing quota system would help assure that both harvesting and processing owners do not have the value of their investments taken from them and allow for each sector be treated equally as the fishery is rationalized.

Question 2. In the North Pacific, there are approximately 15 businesses engaged in processing—some with quite a bit more power than others. If the processing sector is overcapitalized, as you suggested, wouldn't a further consolidation of the processors create the potential for monopolistic behavior by the remaining large companies?

Answer. First, I would like to mention that there are far more than fifteen businesses engaged in processing in the North Pacific. In some specific fisheries, at some distinct geographic locations of the North Pacific, there may be fifteen (or fewer) businesses engaged in processing. But overall the North Pacific has far more than fifteen processing firms.

When a fishery is rationalized through a quota-based system (whether it is a "one-pie" harvester-only IFQ system, "one-pie" processor-only IFQ system, "two-pie" harvester and processor quota system or a simple auction of the quota to the highest bidder) processing capacity and harvesting capacity will both de-capitalize. The harvesting and processing power will decrease. The opilio crab fishery off Alaska is an example. There is currently enough harvesting and processing power to harvest and process the opilio crab fishery in a matter of two weeks or so. If the opilio crab fishery were rationalized through a quota-based system, that fishery could go on for seven months. Obviously most of the harvesting and processing power that is currently used in the two-week long opilio fishery would become unnecessary and would leave the fishery after it was rationalized, no matter who received the rights to the quota.

If the fishery were rationalized through a quota-based system, however, there need not be a reduction in the number of firms processing or harvesting. A "two-pie" harvester and processor quota system, in fact, may allow for more firms to engage in processing because it would allow for specialized processors to purchase quota and become engaged in the processing of small amounts of fish that would not be practical under the open access "race to fish."

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[1] Processing capacity in the North Pacific may be more durable and specific to the fishery involved than are vessels, which can perhaps move from area to area and fishery to fishery more easily than processing plants and equipment.

Question 3. Many processors in the North Pacific own fishing vessels. Therefore, even if processor quota shares were prohibited, isn't it true that processors would receive significant IFQ shares through their ownership interest in fishing vessels?

Answer. No, it is not true. If it were true, owners of processing facilities would not care whether processors received rights under a quota-based system. Processors in the North Pacific care very much about the issue.

The extent that processors in the North Pacific own fishing vessels varies from fishery to fishery and company to company. Many processing companies own no vessels. Others own vessels which provide a fraction of the fish that are delivered to their plants. No processing company, to my knowledge, owns vessels which provide all of its plants' production.[2] To use Trident as an example, our company was founded by crab fishermen who invested in processing capacity. In the opilio crab fishery, the largest crab fishery in the North Pacific, Trident owns three vessels that harvest crab; the *Billikin* (the vessel which started Trident in 1973), the *Bountiful* (which was built by Trident in 1979) and the *Royal Viking*. Trident is a part owner of two other vessels that harvest opilio crab: the *Barbara J* and the *Far West Leader*. These five vessels deliver approximately ten percent of the opilio crab processed by Trident.

There is more ownership of fishing vessels by processors in the Bering Sea pollock fishery (which is already rationalized though the American Fisheries Act). One of the largest pollock shorebased processors, however, does not own any vessels, to my knowledge.

Question 4. Your testimony refers to the cooperatives set up under the American Fisheries Act (AFA) and Trident's participation in the pollock fishery. The AFA statutorily set excessive share caps to prevent consolidation. Is your company in violation of the share caps or has it ever been out of compliance with that section of the AFA? If so, how was the situation remedied? Do you believe that the legislation should specify penalties, such as immediate revocation of quota if the excessive share caps are exceeded?

Answer. There are two separate excessive share sections in the American Fisheries Act ("AFA") to which the question may refer. One section limits ownership of vessels which harvest Bering Sea pollock and the other limits ownership of plants which process Bering Sea pollock. Section 210(e)(1) of the AFA provides that "[n]o particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than seventeen and one-half percent of the pollock available to be harvested in the directed pollock fishery." Section 210(e)(2) provides that "[u]nder the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from processing an excessive share of the pollock available to be harvested in the directed pollock fishery." Under the direction of section 201(e)(2), the North Pacific Fishery Management Council recommended, and the Secretary of Commerce established, an excessive pollock processing cap of thirty percent. Both of these standards are measured on a calendar year basis. Trident has not violated either excessive share limitations. I believe that the penalty for violation of these standards may already potentially include revocation of a vessel's AFA fishing permit or a processor's AFA processing permit.

Question 5. In Mr. Giles' testimony, he stated his dissatisfaction with the current halibut and sablefish IFQ programs but also stated that it would not be possible to "reasonably try to change that program." What sort of measures would you recommend that Congress implement to ensure that changes could be reasonably made to any new IFQ program? Without a sunset, how can we guarantee if an IFQ program is not working satisfactorily that it can be terminated?

Answer. IFQ quota shares have value and are treated by the public as a property right regardless of existing statutory language in the Magnuson-Stevens Act stating that quotas are revocable at any time. It is extremely unlikely that any of the existing IFQ plans will ever be terminated. Because it would be so difficult to make major changes to an IFQ program once it is implemented, Congress should establish clear and specific guidelines for future IFQ programs to avoid some of the problems that might otherwise arise.

Even a statutory sunset provision does not necessarily remedy some of the problems that can arise from the adoption of IFQs. For example, if all IFQ shares for Bering Sea crab were auctioned to the highest bidder, but the program were scheduled to sunset in seven years, owners of harvesting and primary processing capacity

[2] There are a few companies that operate only crab or groundfish catcher/processor vessels. Catcher/processor vessels harvest and process on board the vessel. They are completely vertically integrated operations.

would still have the value of their investments taken away. The fact that the program might sunset in seven years would be of little comfort.

Question 6. One of the important components of an effective IFQ program is adequate enforcement. However, we have seen over the years instances, such as major waves of illegal migrants, when the Coast Guard has had to curtail fisheries enforcement activities to address pressing needs. The fiscal year 2002 budget includes a 15 percent reduction in Coast Guard law enforcement activities. If this reduction occurs, would it change your position on the use of IFQs? Would such a reduction require additional safeguards be incorporated into any new IFQ programs? If so, what would you recommend?

Answer. Enforcement is an issue with IFQ programs. There is generally a greater incentive to high-grade under an IFQ program than under open access fisheries. IFQ management plans should contain a strong enforcement component that does not rely upon the Coast Guard for implementation. In the North Pacific, observers have been used on vessels and plants participating in the groundfish fisheries. Perhaps a similar program can be adopted as appropriate for IFQ fisheries.

Question 7. In a fishery where fishermen sell directly to a processor, requiring processor shares has obvious advantages and I can understand why you would want to require that processors be given access to quota. However, in New England, many fishermen sell their catch through auctions like the ones in Portland, Maine and Gloucester, Massachusetts. Processor shares in this case don't make much sense. What would the New England Council do in this case, if we require them to allocate quota to processors? Isn't this a perfect example of requiring regional flexibility and letting the councils decide if it is appropriate to include processors? Would you also require processors be granted access to quota if an IFQ were implemented in cases where there is no derby fishery?

Answer. I am not familiar with the fisheries off the coast of New England; however, the mere fact that fish might be sold through an auction would not diminish the necessity of including both vessel owners and primary processors in the initial allocation of rights under a quota-based system.

My point is that the potential benefits of privatized fisheries have been frequently studied. There has been little serious examination of the economic impacts on existing investments in the industry during the transition between open access and privatized fisheries. In an overcapitalized fishery that is capital intensive, and where that capital is both relatively durable and specific to the fishery involved, the owners of that harvesting capital and primary processing[3] capital should expect enormous losses during the transition between the open access and privatized fishery equilibrium conditions.

The issue is not whether fish are sold at an auction, but whether investors in harvesting capacity and primary processing capacity have invested in the open access race to fish and whether implementation of a quota-based management program will slow the pace of the fishery such that the existing capital investments in harvesting and primary processing are unnecessary.

If, under an open access system, fish are harvested and then sold in the fresh market, there is no primary processing and, in that specific case, there would not be any need to include primary processors in the initial allocation of IFQ fishing rights.

If there were no derby fishery (i.e., there was no excess harvesting and processing capacity and thus no overcapitalization in either the harvesting or processing sectors), it can be argued that processors need not be included in the initial allocation of quota shares, but then why would you include vessel owners in the initial allocation of quota shares? If there is no overcapitalization, there is no rationale for including vessel owners in the allocation of quota shares. Moreover, whatever IFQ system is adopted, I do not believe it should change the bargaining position between harvesters and processors. In summary, there is no reason to treat investors in processing capacity differently from investors in harvesting capacity. IFQ systems have the potential for expropriating the value of investments made by owners of harvesting and processing capital. The regional councils should be given clear and un-

[3] Fish are highly perishable before being processed into a primary product. Investors in fishing vessels and primary processing capacity have made investments based on the requirement that fish be handled quickly; i.e., these investors have invested in the "race to fish" caused by the open access fishery management regime. Investors in secondary processing of seafood, on the other hand, have not made their investments based upon the "race to fish" caused by open access. Secondary processors have not overcapitalized as a result of the existing management regime and will not be adversely impacted, therefore, by the privatization of fishery resources. Being that secondary processors are consumers of processed seafood, their investments may benefit if the utilization of fishery resources is increased through privatization.

ambiguous direction from Congress that vessel owners and processors be treated equally in the allocation of privileges under a quota-based system.

Question 8. In her testimony, Ms. Behnken stated that processors suffer from the one-time expense of cutting back or ending operations. How do you respond? Would you support requiring an IFQ program to help fund processor buyout through fees instead of requiring processors have access to quota?

Answer. The reduction of value of the investments made in primary processing caused by the adoption of an IFQ system can be characterized as a "one-time" expense the same way that if my house were taken from me it would be a one-time expense. If only processors received quota shares, vessels owners would also suffer a "one-time" expense because of a decrease in the value of their vessels. The value of the capital invested in primary processing and harvesting is transferred to the quota share holders when an IFQ program is implemented, so if there is a buyout of existing investments in those sectors, the buyout should be paid for by the quota share recipients and not the general public.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN F. KERRY TO JOE PLESHA

Question 1. We are seeing an increased interest in buying out excess capacity prior to the institution of an IFQ. While in some instances this has been precipitated by a resource crash, fewer fishermen means that the value of the quota remaining for the IFQ increases on a per capita basis. I would like to ask you to put yourselves in our shoes—

- Is this a sensible use of government funds?
- What are the problems or benefits associated with this arrangement?
- What does the public receive from this series of transactions, and how does one prevent windfall profits from occurring?
- Is a buyback or an IFQ a better way to reduce overcapacity? Does your answer differ based on the circumstances surrounding an individual fishery?

Answer. As a starting point, I am skeptical of whether most buyback programs are a wise use of government funds. In a macro sense, the government subsidizes entry into the fisheries through various governmental programs (for example, the tax-deferral "Capital Construction Fund" program). Then the fisheries become overcapitalized so the government subsidizes exit from the fisheries through buyback programs (while government-subsidized entry often is continuing). Although there may be exceptions, government-funded vessel buyback programs do not generally seem to be a sensible use of funds.

IFQ programs, on the other hand, have been described as an "industry-funded buyback program" because to the extent a fishery is overcapitalized, the IFQ program will reduce the amount of harvesting and processing power in the fishery. Vessel owners (and hopefully processing plant owners) who leave the fishery, leave voluntarily and are compensated for leaving by the leasing or selling of their quota. Those who use the quota pay those who do not, and therefore, the program is a self-funding buyback of unnecessary capital. I believe that an IFQ program (that includes both investors in harvesting and primary-processing capacity) is a better way to reduce overcapacity in the industry.

Using a government-funded vessel buyback prior to the adoption of an IFQ program may increase the cost to the federal government because instead of buying a vessel in an overcapitalized fishery, the government is paying for the vessel owner's anticipated value of the quota shares that the vessel would receive. Furthermore, the beneficiaries of such a buyback program would primarily be those vessel owners who chose not to sell their vessels because, as the question noted, the amount of quota shares they would receive would increase on a pro rata basis. If quota share holders are the primary beneficiaries of a buyback program, why not have the quota share holders pay for the buyback instead of the public at large?

Question 2. The NRC report identified concerns that high-grading might occur in IFQ fisheries. Since the issuance of that report, have any studies shown high-grading to be a problem in IFQ fisheries?

Answer. I have not heard of any formal studies on this issue.

Question 3. Massachusetts fishermen, like many small fishermen, do not believe that it is possible for a Council to allocate quota fairly in an IFQ system. This belief stems primarily from their experiences under the current fishery management regime and concerns about conflict of interest in Council decisions.

- How can better accountability and fairness be built into any process to design and allocate an IFQ system?

- Have conflicts of interest in the Council (or other systems you are familiar with) been a particular problem in establishing IFQs?
- Could we address this allocation fairness concern through use of a neutral entity—at least until conflict of interest rules are shown to be effective?
- Are there any models that we can look to?

Answer. It is rare for all sectors of interested parties to be evenly represented on a regional council. Those sectors that are under-represented on a particular council might rightfully fear being permanently disenfranchised under the adoption of an IFQ program. I do not believe that having a neutral entity make these decisions is workable. It is very difficult to identify a truly neutral entity. Just by identifying and working with a neutral party, the decision makers will have made the decision to go forward with some IFQ program. Depending upon how the program is structured, it is possible that the costs of such a program to the existing participants in the industry will out weigh the benefits. (For example, the neutral party could decide to auction the quota shares to the highest bidder.) So it is not clear that requiring a "neutral" party will provide any better assurances that quotas under an IFQ system will be allocated fairly.

I would make two recommendations. First, the ramifications of an IFQ fishery on existing investors in the fishery are so dramatic it is very important as a fundamental first step for Congress to establish clear and unambiguous guidelines for councils to follow when allocating IFQ rights prior to the adoption of any future IFQ programs.

Second, there is a procedural method to protect those who have invested in the harvesting and primary processing of a fishery from having the value of their investments taken from them. Section 407 of the Magnuson-Stevens Act contains the requirement of a referendum for the commercial red snapper fishery in the Gulf of Mexico. Using this section as an example, I believe it is appropriate for Congress to require a double referendum before any future IFQ programs can be adopted. The referendum should require approval by a super majority of *both* harvesters and primary processors in the fishery that is being rationalized through the IFQ system. That would provide assurance that one sector is not having the value of its investments taken from it. It would generally provide confidence that whatever IFQ system is created, it is fair to a large percentage of the entities that currently participate in that fishery.

Question 4. It has been suggested that the concepts of area management and fishery cooperatives could be combined to provide communities with both flexibility and predictability. Perhaps a fishing community could be given exclusive rights to fish in an area along with a quota on landings.

- Would such an arrangement be workable in practice?
- What concerns need to be addressed in such a system?
- In your experience, are any such systems used in other countries?

Depending upon the details, such an arrangement might be workable. One of the attributes of quotas is that they are malleable and can easily be transferred to those who most efficiently use the resource. A community does not actually fish or process, per se. But the community could transfer the right to harvest the resource to those it believes should be awarded those rights. I assume that the community would transfer those rights to those who agree to provide the most benefits to the community.

I would only caution that to the extent quotas (or exclusive rights, as they are labeled in the question) are allocated to communities, there is a risk that investors of harvesting and processing capital in the fisheries might not be compensated for have the value of their investments transferred to the quota share recipients.

Question 5. As you know, the NRC report addressed the question of processor shares. First, the NRC found that there was no compelling reason to include or exclude processors from initial allocation of harvester quotas, and recommended leaving it to the Councils to decide whether a mechanism is needed to address any unacceptable disadvantages of an IFQ to processors (such as buyouts). They generally cautioned against allocation quota to processors because it would result in making the IFQ program too complex. In addition, the NRC found there was no compelling reason to establish a separate, complementary processor quota system (the "two-pie" system).

- Do you think the NRC panel got this right?
- S.637 allows only harvester shares—I don't see any compelling reason to change that prohibition—do you?

Answer. The NRC panel did not ask (or try to answer) the quintessential issue with regard to IFQ allocations: Why allocate rights in a public resource to any distinct sector of individuals or firms? Why not simply auction off the rights to a public resource so that the general public receives the economic benefits from the fisheries it owns?

Vessel owners have been allocated IFQ shares in the past. Why? I've heard it said that we want "fishermen" to receive fishing quota but, at least in the North Pacific, most vessels are owned by corporations. Corporations do not actually fish. Many times the shareholders of the corporations that own vessels have never fished. Those vessel owners who do fish and who have received allocations of IFQ shares, received these shares not because they fished, but because they owned a fishing vessel. So fishermen have not traditionally been allocated quota shares.

Had the NRC tried to answer the fundamental question of why not allocate these IFQ quota share rights to the general public through an auction, they would likely have come to a different conclusion. There *is* a compelling reason to allocate quota shares to *both* vessel owners and primary processors. Both sector of investors have much the value of their investments taken from them and transferred to quota share holders when a fishery is rationalized through an IFQ system. There is no rational basis, however, for allocating quota shares one sector of investors and not the other.

The goal of the "two-pie" system is to assure that investors in both fishing vessels and primary processing be compensated with quota for the devaluation of their investments when the fishery is rationalized. That same objective can arguably be achieved by AFA-style cooperatives or allocating IFQ harvesting shares to both vessel owners and primary processors. The main point of my testimony is not to insist that a "two-pie" system is essential. It is that Congress should require vessel owners and primary processors be treated equally in the allocation of privileges when a quota-based management system is adopted to rationalize a fishery.

Question 6. In a September, 1999, report to the North Pacific Fishery Management Council by Dr. Halvorsen of the University of Washington it is reported that Trident Seafoods controlled nearly 55 percent of the catcher vessels that participate in the pollock co-op that delivers to Trident under the American Fisheries Act (and 88 percent of the catch). Other processors that were given co-ops under the American Fisheries Act have similar levels of catcher vessel control.

Given that processors who own or control catcher vessels would likely receive IFQ shares for those vessels even under a harvester IFQ, I would like to know why you feel that processors should also receive Individual Processing Quota (IPQ) shares as well. It seems to me that if you have both IFQ and IPQs what you are really doing is giving independent catcher vessels only one-half a piece of the pie, with the processor getting the other half, while for processor controlled boats you get a full piece of the pie. Do you disagree?

Answer. As I mentioned in response to a question for the record from Senator Snowe, the extent that processors in the North Pacific own fishing vessels varies from fishery to fishery and company to company. Although the figures Dr. Halvorsen reported overestimates the number and capacity of vessels Trident owns, the company does own a number of pollock trawl vessels. There are some pollock processors, however, that do not own any of the vessels that deliver pollock to their plants. Moreover, no pollock shorebased processor owns all of the vessels that deliver pollock to its plants, as far as I am aware.

Another example in the North Pacific is crab. In the opilio crab fishery, the largest crab fishery in the North Pacific, Trident owns three vessels and is a part owner of two other vessels that harvest opilio crab. These five vessels deliver approximately ten percent of the opilio crab processed by Trident. Other processors may own a greater percentage of the vessels that deliver crab to their plants. Some processors in the crab fishery do not own any vessels that deliver crab to their plants.

If a firm owns all of the vessels that deliver to its processing plant, that firm would be indifferent to whether vessel owners were allocated all of the rights in a quota-based system, primary processors were allocated all of the rights under a quota-based system, or both vessel owners and primary processors each receive half of the rights under a quota-based system. But if there is less than 100 percent vertical integration between harvesting and processing, it is important that each sector receive rights to the rationalized fishery.

I agree with your characterization of who gets how much pie. Please understand, however, that under the "two-pie" system, processors and vessel owners simply maintain their existing market position vis-à-vis the other as the fishery is rationalized. If, under an open access fishery, an independent vessel delivered to an independent processor, each of those two would be dividing the economic benefit from the fishery. The same division between vessel owner and processor would happen

under the "two-pie" system: the vessel owner and processor would reach receive "one-half piece of the pie"—as you put it in your question—because that is the division between the two under the open access fishery. And, if a single firm owned both the fishing vessel and the processor, that firm would receive the whole pie under the open access fishery. That firm would also receive the whole pie under the "two-pie" system. Again, the point is to maintain the market position of vessel owners and processors as the fishery is rationalized.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO KAY WILLIAMS

Question 1. S.637 requires any new IFQ program to prevent the acquisition of an excessive share of quota. Furthermore, S.637 defers to the appropriate Council to determine how to prevent such an accumulation of excessive shares. Some have suggested that this provision should be more specific—for example, whether an excessive share cap would be set by a percentage based on national conditions, or on a fishery-by-fishery basis. How can new IFQ programs ensure that quota shares will not be consolidated into the hands of the largest fishing interests? Do you believe that the legislation should specify penalties, such as immediate revocation of quota if the excessive share caps are exceeded?

Answer. I think the percentage used as a cap should be set on a fishery-by-fishery basis, but within an overall national cap of 3 to 5 percent. The national cap on shares will help prevent excessive shares. In some fisheries the Council may set more restrictive caps. The problem would likely be in determining whether individual corporate entities are secretly linked. The revocation of quota provisions might be helpful in that the Councils cannot specify that type of penalty.

Question 2. As S.637 is currently written, quota cannot be transferred. If some limited transferability, or leasing of quota were allowed, would you support allowing the environmental community to lease quota for a year (or other limited period of time) if fishermen raised questions about the condition of the stock due to environmental fluctuations or other competing resource management needs such as the protection of an endangered species? Would this be a viable way to compensate the fishermen while giving NMFS and the Council time to address a pressing problem?

Answer. As I indicated in my testimony, the non-transferability of quota under S.637 limits IFQs as a management tool; therefore, I favor allowing transferability and leasing. I do not support setting forth in law the rights of the environmental sector to purchase or lease quota, especially under the conditions you cited.

Question 3. In Mr. Giles' testimony, he states his dissatisfaction with the current halibut and sablefish IFQ programs but also states that it would not be possible now to "reasonably try to change that program." What sort of measures would you recommend that Congress implement to ensure that changes could be reasonably made to any new IFQ program? Without a sunset, how can we guarantee if an IFQ program is not working satisfactorily that it can be terminated?

Answer. Mr. Giles' dissatisfaction was entirely from his firm's perspective as a dealer/processor. His testimony indicated that the IFQ for the halibut/sablefish fisheries was a "happy story" for the fishermen. Considering his testimony, I believe it would have been a grave miscarriage of justice if the dealers had been granted a share of quotas as he proposes. All his firm and the other firms did was greatly expand their freezer capacity to the extent they could purchase and hold the entire TAC of halibut taken in the 48-hour season and the sablefish from a similar derby fishery. I'm sure they purchased the fish at a very depressed ex-vessel price and then got to market them over the year. No wonder his firm's profits declined with the IFQ. I do not support including dealers as recipients of IFQ shares. If you give quota shares to dealers that have never received them in the past you will have to take the quota shares away from the fishermen who had always harvested them as part of the overall commercial quota. The fishermen will then have to lease or buy these shares from the dealers. The dealers are now double dipping. In the Gulf areas some dealers also own vessels so they would receive quota shares because the vessels have landed fish in the past. If a region does not allow them to be sold, leased or transferred then the dealers who do not own vessels cannot have someone to harvest them.

I objected to the 5-year sunset in your bill largely because of the negative image it creates with the industry, that the system will likely cease to exist after 5 years, thereby creating a reduced incentive for purchasing IFQ shares. I think you could create a more positive image of the system by stating that the system would be evaluated after 5 years to determine its effectiveness and either extended, if effective,

or terminated. The Councils have the authority under the Act to amend each FMP at any time.

Question 4. According to the NAS report, it is unknown whether IFQs mitigate or enhance the dangers of fishing. For example, the Atlantic surf clam IFQ program is considered a management success. Since the 1990 adoption of this IFQ, economic efficiency has increased and excess harvesting capacity has been reduced. However, during the development of this IFQ program, improved safety was a major selling point due to the frequent losses of boats and lives in the surf clam fishery. Yet, since the 1990 inception of this IFQ, nine clam boats and at least 14 lives were lost in the fishery, a rate of loss comparable to that of the pre-IFQ 1980s. The adoption of the IFQs in the surf clam fishery has not improved safety. Recognizing that fishing is a very dangerous profession, how can we ensure that any new IFQ program will enhance safety? Do you have any general recommendations for improving safety whether or not new IFQs are implemented?

Answer. I do not know enough about the surf clam fishery to assess the information on vessel safety. With that type of accident record it sounds like vessels were overloaded with clams prior to and after the ITQ system. That type of overloading would not occur in our fisheries. I think that ITQs would make a major improvement in safety for our commercial red snapper fishery. Currently they are taking the entire annual quota in 50 to 60 days under a vessel limit of 2,000 pounds per trip. Under an ITQ system they could fish any time during the year to take their share.

Question 5. One of the important components of an effective IFQ program is adequate enforcement. However, we have seen over the years instances, such as major waves of illegal migrants, when the Coast Guard have had to curtail fisheries enforcement activities to address pressing needs. The fiscal year 2002 budget includes a 15 percent reduction in Coast Guard law enforcement activities. If this reduction occurs, would it change your position on the use of IFQs? Would such a reduction require additional safeguards be incorporated into any new IFQ programs? If so, what would you recommend?

Answer. No, it does not change my position on the use of ITQs. It is unlikely that we would be able to implement an ITQ system during 2002. I would certainly hope the Congressional appropriations committees would increase the funding available to the Coast Guard as they have the major role in enforcing all of the Councils' rules.

Question 6. Mr. Crockett stated that the Councils should be prohibited from determining the initial allocation of quota based on historical participation. However, Mr. White stated that the use of historical participation is critical to capture the traditional fishing patterns. Would you comment on the allocation of quota based on past fishing patterns and the potential impact it could have in your communities if it is not considered.

Answer. I think it is very important to consider historical participation in designing the eligibility criteria for ITQ systems. For our red snapper and reef fish fisheries we have required logbooks since 1992. We will use the recommendations of the Ad Hoc Red Snapper AP (see responses to Senator Breaux) in using these records to determine eligibility and quota shares. I see no impact on fishing communities by using the records and an adverse impact if we do not use these records of historical participation.

Question 7. Increased management and enforcement costs are often associated with IFQs. Many have recommended to the Subcommittee that we require IFQ participants to pay for these costs through the use of fees. Currently, the Magnuson-Stevens Act requires the collection of fees for this purpose although I understand that NMFS has not been aggressive in implementing this requirement. What is the willingness and ability of your region's fisheries to pay management costs as part of an IFQ?

Answer. See my discussion under questions raised by Senator Kerry.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN F. KERRY TO KAY WILLIAMS

Question 1. We are seeing and increasing interest in buying out excess capacity prior to the institution of an IFQ. While in some instances this has been precipitated by a resource crash, fewer fishermen means that value of the quota remaining for the IFQ increases on a per capita basis. I would like to ask all of you to put yourselves in our shoes—

- Is this a sensible use of government funds?

Answer. No, it is not proper use of government funds. Buying excess capacity should be the very last resort in limited cases where there is a fishery resource disaster.

- What are the problems or benefits associated with this arrangement?

Answer. The problem is that there is latent capacity in most fisheries and buy-back programs in removing that potential capacity does little good.

- What does the public receive from this series of transactions, and how does one prevent windfall profits from occurring?

Answer. The public receives virtually nothing. If the buy-back program is based on fair market value for the vessel there should be no windfall profit to the seller, but unless that vessel can be sold there is a loss to the public.

- Is a buyback or an IFQ a better way to reduce overcapacity? Does your answer differ based on the circumstances surrounding and individual fishery?

Answer. A transferable IFQ system, or an ITQ system, is a much better way to reduce excess capacity in that the costs are borne by the industry and government involvement is minimized. For some of our fisheries (for example, the shrimp fishery) ITQs will not work well. The Gulf shrimp fishery consists of 3 stocks which are annual crops, with great variation in the size of the harvestable crop produced each year. The stocks migrate to sea over a limited period during which fishing must occur in order to efficiently harvest the stocks. I do not support buy-back programs for the fisheries in which ITQs are not effective either.

Question 2. Many economists state that IFQs can provide a straightforward way to recover some of the value of granting fishermen access to a public resource. This could be accomplished via auctioning off initial quota shares or by assessing fees on a percentage of landings, or both.

Answer. I think it would be unfair to the vessel owners who have risked the capital to develop the capacity to harvest the stocks if the initial quota was auctioned off. This has the potential to provide major windfall profits to firms that were never associated with these fisheries. Because of the overcapacity existing in fisheries where ITQs might help, these owners are unlikely to have the capital resources to either purchase initial quota through the auction or initially pay fees as a percentage of landings. I do, however, support requiring such fees after overcapacity is reduced to the point that the industry can pay the fees and would hope the level of fees and time of implementation would be left to the Councils to decide. Always remember that those who do not fish and those who chose not to fish should be able to buy seafood at a reasonable price. Extra cost will be passed onto the consumer.

- Do you believe that all fishermen granted shares in an IFQ fishery should have to pay a fee for exclusive access to a public resource?

Answer. Yes, as I indicated above, at such time as the overcapacity has been reduced by the ITQs to the extent the profit margin has increased for the remaining participants.

- What are the pluses and minuses of using an auction as opposed to landings fees?

Answer. The minuses are that the auction system would likely: (1) displace a large portion of the current harvesters; (2) significantly reduce the value of the vessels belonging to the harvesters displaced; (3) potentially provide a windfall profit to firms never associated with the fishery or the costs of developing the current harvest capacity. From an industry prospective I cannot think of any pluses.

- In extremely over-capitalized fisheries, would there be merit to delaying or phasing-in fees/auctions until sometime after the imposition of an IFQ system? Could this potentially allow small-scale fishermen time to adjust their fishing practices so that the fee would not be an undue burden?

Answer. Very definitely there would be much merit in taking this approach. In fact, I think it would be the only fair approach.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN JOHN B. BREAUX TO KAY WILLIAMS

Question 1. Ms. Williams, in your testimony you identify two areas of concern regarding S.637, IFQ Act of 2001 sponsored by Senator Snowe: Individual Fishing Quotas (IFQ) vs. Individual Transferable Quotas (ITQ); and expiration of quotas after 5 years.

- Please elaborate on the differences between IFQ/ITQ and why you believe the Gulf would not support an IFQ system?

Answer. As I understand it IFQs can be transferable or non-transferable (as in S.637). ITQs are always transferable. I believe that our red snapper industry would not approve a non-transferable IFQ system by two-thirds vote, whereas I believe they would support an ITQ system. I do not know whether two-thirds of the permitted reef fish fishermen would support an ITQ system, since most of these fishermen target grouper off Florida. The grouper fishery has been fairly stable and the fishermen have not been under a restrictive quota like the red snapper fishermen. Our red snapper fishermen have been under a license limitation system where the licenses can be transferred, sold, or leased.

- Why are there concerns over the provision in the bill for individual quotas to expire after 5 years? Is it because of the 51/49 percent split between the commercial/recreational share of the red snapper fishery?

Answer. No it is not related to the commercial/recreational allocation. I felt that an ITQ/IFQ system would be less acceptable to the industry if federal law provides it will automatically expire within 5 years. It would be much more acceptable if the bill had provided the system will be evaluated for its effectiveness after 5 years and either extended or terminated.

Question 2. In December, Congress gave the Gulf Council authority to investigate the benefits and costs of quota management for Gulf fisheries. Given the long-standing and high level of interest among Gulf fishermen to get started on ITQ planning—and Congress' desire for input from the Gulf region—what have you/the Council accomplished so far, and what is your timetable for completing this investigation?

Answer. The Council will appoint an Ad Hoc Advisory Panel (AP) consisting of red snapper commercial fishermen and dealers with 4 non-voting advisors representing the scientific, law enforcement, and environmental communities. We will appoint the AP members at our July 2001 meeting. They will serve as our principal advisors in considering the structure of an ITQ system. In developing the red snapper ITQ system implemented in 1995 (and rescinded in 1996) we used a similar AP. Other advisory groups that will participate in this process include the SSC and Socioeconomic Panel (SEP) consisting entirely of economists and sociologists. I think the process of preparing the profile for consideration by the red snapper industry will take a year or a year and a half to complete.

Question 3. The Committee was recently provided with a copy of a scoping document titled "Individual Transferable Fishing Quota (ITQ) Issues and Options" prepared by commercial fishermen. I'm told that the Council was also provided a copy of this document.

- Have you had the opportunity to review the scoping document? If so, do you believe the Gulf Council would be supportive of this document?

Answer. The document was provided to us in May and we have provided copies to our members for their review. The persons drafting the document did a lot of work in compiling such a broad array of options. Some of the definitions in the working draft are incorrect and I am not sure as to how many of the commercial red snapper fishermen were involved with the working draft. I only saw five names of commercial fishermen in the Gulf area listed under the reference. Under Option 1: Section 3.1, Historical Captains were left out of the Initial Allocation of Quota Shares. These men "Historical Captains" will have a vote in the referendum according to the Magnuson-Stevens Act. I think the industry document is probably overly broad in including the entire complex of snappers and groupers as did the Council in its motion to appoint a red snapper AP instead of a reef fish AP. We will, however, have the AP review its provisions, along with reviewing Amendment 8 which contained the Council's red snapper ITQ system, as well as other IFQ/ITQ systems.

Question 4. Ms. Williams, I continue to hear that conflicts of interest on the Council prevent adoption of fair management measures. In 1996, we tried to address conflicts of interest on the councils by requiring a recusal process for cases when Council members have a financial interest in fishery management decisions. However, now I'm told that conflicts of interest also exist because the Council is unfairly balanced—only 5 of 17 members are commercial based/represent commercial interests.

- Do you believe there is a conflict of interest problem in the Gulf Council, and how would you say the problem could be fixed?

Answer. Actually, only 4 of the 11 members appointed by the Secretary are commercial. Under the Act, as currently structured, this imbalance can only be corrected by the Secretary in the appointment of members. The Governors of the five Gulf states do not always submit a balanced list of nominees. They should be told,

that if they do not submit both commercial and recreational names to the Secretary, then their list of nominees will not be considered.

- Do you feel that conflicts of interest will hamper the Council from developing an IFQ/ITQ system, and if so, why?

Answer. I certainly hope not. When we developed the previous red snapper ITQ system 6 members were commercial, and the system seemed to be supported by a large majority. There does seem to be more expression of opposition to any system that might create a windfall profit or privatization of a portion of the stocks.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO DON GILES

Question 1. Mr. Plesha's testimony states that the reasons for allocating IFQs to processors are the same as those for harvesters. Those in favor of IFQs often argue that they will result in improved conservation; increased safety at sea; a reduction in overcapitalization; and, economic efficiency. Do you believe processor quota shares improve conservation and increase safety for commercial fishermen?

Answer. Conservation and increased safety will be a positive by-product of any rationalization program, including IFQs. Those benefits would result regardless of whether harvesters received 100 percent of the IFQs, processors received 100 percent of the IFQs, or if both were rationalized in a fair and equitable manner. However, only those that are rationalized will get the benefits of reduction of overcapitalization and economic efficiency. Unless both harvesting and processing are rationalized together, especially in the remote areas of the North Pacific, rationalization will cripple either sector that is not included as part of the rationalization program. If the processing sector is excluded, harvesters will have fewer markets as processors exit crab fisheries with low GHLs or provide less processing capacity, in general.

Question 2. In the North Pacific, there are approximately 15 businesses engaged in processing—some with quite a bit more power than the others. If the processing sector is overcapitalized, as you suggest, wouldn't a further consolidation of the existing processors create the potential for monopolistic behavior by the remaining large companies?

Answer. There are substantially more than 15 businesses engaged in processing in the North Pacific. The State of Alaska alone has issued over 400 fishery business licenses for 2001. I am not sure what is considered "more power", but clearly there are several companies like us that have historically participated in most fisheries in the North Pacific. There has been no limitation or restrictions on processing in the North Pacific and processors range anywhere from small single fishery operations to larger multi-species companies like us. The harvesting sector is also made up of single vessel, single fishery operator to large corporations, not related to the processing sector, that have multiple vessels and multiple fisheries. Whether a large or small harvester or processor, the potential benefits of rationalization should be enjoyed by all and not come at the expense of some.

Certainly Congress can either directly or through the Council process provide safeguards to assure neither the harvesting or processing sector is damaged due to excessive control of either sector.

Question 3. Many processors in the North Pacific own fishing vessels. Therefore, even if processor quota shares were prohibited, isn't it true that processors would receive significant IFQ shares through their ownership interest in the fishing vessels?

Answer. Certainly some processors own fishing vessels and would receive IFQs just like some fishermen own processing companies and would receive processing quotas if allowed. Some processors own catcher/processors, as do some fishermen. As long as both processors and harvesters legally got to where they are, why should either be punished or put to a disadvantage with a rationalization program. If processor quota shares were prohibited, companies that have not invested heavily in the harvesting sector would be disadvantaged. Excessive share caps should be looked at, in both the harvesting and processing sectors, to assure neither sector can be controlled by the other. Each fishery is different and ownership of harvesting vessels by processors and processing companies by harvesters should be looked at to help determine adequate ownership caps in each sector. Our Company owns two crab vessels and two multi-purpose vessels that operate in one crab fishery. They have delivered less than 10 percent of the crab we have processed the past 5 years. If only IFQs were authorized and processing quotas were prohibited, our investment in the harvesting vessels would be protected, but our processing business would still fail, as it would not get the same benefits and efficiencies the harvesting sector got

with IFQs. Only if we owned 100 percent of the vessels that have delivered to us would an IFQ-only program work. However, this is the exact situation that seems to be the biggest concern for those not in favor of processor rationalization.

Question 4. S. 637 requires any new IFQ program to prevent the acquisition of an excessive share of quota. Furthermore, S. 637 defers to the appropriate council to determine how to prevent such an accumulation of excessive shares. Some have suggested that this provision should be more specific—for example, whether an excessive share cap would be set by a percentage based on national conditions, or on a fishery-by-fishery basis. How can new IFQ programs ensure that quota shares will not be consolidated into the hands of the largest fishing interests? Do you believe that the legislation should specify penalties, such as immediate revocation of quota if the excessive share caps are exceeded?

Answer. I have previously addressed the excessive share issue and think there should be such caps in both the harvesting and processing sectors. I believe this is best left to the Councils to decide on a fishery-by-fishery basis with specific guidance and direction from Congress. Legislation that specifies penalties, including revocation of quota, is appropriate.

Question 5. In your testimony, you expressed dissatisfaction with the current halibut and sablefish IFQ programs but also stated that it would not be possible now to "reasonably try to change that program". What sort of measures would you recommend that Congress implement to ensure that changes could be reasonably made to any new IFQ program? Without a sunset, how can we guarantee if an IFQ program is not working satisfactorily that it can be terminated?

Answer. One way would be to prohibit any *permanent* transfers of any quota, harvesting or processing, for a period of two or three years after which a referendum of all quota holders, both harvesting and processing, would validate the program, after which permanent transfers can take place. This would allow all participants the opportunity to enjoy the benefits of rationalization, including temporary transfers of quota until the program is validated by all participants (both harvesting and processing). Permanent transfers of quota, resulting in permanent de-capitalization and increased efficiencies, is one of the major benefits of rationalization. A two-year moratorium on permanent transfers would give the industry, Councils and Congress the opportunity to continue the program, fine tune it or return to status quo.

Question 6. One of the important components of an effective IFQ program is adequate enforcement. However, we have seen over the years instances, such as major waves of illegal migrants, when the Coast Guard have had to curtail fisheries enforcement activities to address pressing needs. The fiscal year 2002 budget includes a 15 percent reduction in Coast Guard law enforcement activities. If this reduction occurs, would it change your position on the use of IFQs? Would such a reduction require additional safeguards be incorporated into any new IFQ programs? If so, what would you recommend?

Answer. Quota programs increase the motivation of both harvesters and processors to follow the regulations and to use peer pressure to ensure that others play by the rules. Quotas for harvesters and processors represent a long-term commitment to a fishery and a strong interest in keeping it healthy, both biologically and financially. On the "big stick" side, the possibility of losing quota shares in an enforcement action is a very high stakes gamble and a strong incentive to stay inside the regulations.

Question 7. In a fishery where fishermen sell directly to a processor, requiring processor shares has obvious advantages and I can understand why you would want to require that processors be given access to quota. However, in New England, many fishermen sell their catch through auctions like the ones in Portland, Maine and Gloucester, Massachusetts. Processor shares in this case don't make much sense. What would the New England Council do in this case if we require them to allocate quota to processors? Isn't this a perfect example of requiring regional flexibility and letting the councils decide if it is appropriate to include processors? Would you also require processors be granted access to quota if an IFQ were implemented in cases where there is no derby fishery?

Answer. Certainly each area of the country is unique and different. Not knowing the situation in New England, it's hard for me to comment on what will work and what will not. Clearly in Alaska, there has been huge investment of both the processing and harvesting sectors that cannot be used for any other purpose. Those investments in very remote parts of Alaska are inter-dependent on each other under the current derby-style fisheries. If the fisheries are rationalized, both sectors must be rationalized or the investments made by one sector will be stranded in very remote parts of the North Pacific. Most of the processing locations in remote Alaska are uniquely and totally dependent of the various fisheries. Most of these communities where located are small and those assets cannot be transferred or re-invested

for other industries because there are none. All non-rationalized fisheries in Alaska are derby fisheries. All regions are different and have their own unique challenges. In Alaska, the situation is obviously different than how you describe the situation in New England, and appears to support regional flexibility.

Question 8. Ms. Behnken stated that processors suffer from a one-time expense of cutting back or ending operations. How do you respond? Would you support requiring an IFQ program to help fund a processor buyout through fees instead of requiring processors to have access to quota?

Answer. Ms. Behnken's comment was very disturbing as it would be to her if I suggested that we just give harvesters some money to go away whether they wanted to or not. What she acknowledged is that processors' investment will be devalued with a harvester-only IFQ and her only remedy was to just give processors some money to go away whether we want to or not. In the case of our Company, after 35 years of working with independent fishermen developing, Americanizing, and fully utilizing various fisheries in the North Pacific, she is suggesting we take some money and go away. Some of us do not want to go away. We want to be part of the future. Rationalizing both the processing and harvesting sectors allows those that want to continue to do so and also allows both sectors to privately fund a buyout of those harvesters and processors that want to exit. If the processing sector is allowed to rationalize the same as the harvesting sector, whether through processing quotas, cooperatives, or any other equitable system, there would be no need for any sort of fund for processor buyout.

Response to Written Questions Submitted by Hon. John F. Kerry to Don Giles

Question 1. We are seeing an increasing interest in buying out excess capacity prior to the institution of an IFQ. While in some instances this has been precipitated by a resource crash, fewer fishermen means that value of the quota remaining for the IFQ increases on a per capita basis. I would like to ask all of you to put yourselves in our shoes—

- Is this a sensible use of government funds?
- What are the problems or benefits associated with this arrangement?
- What does the public receive from this series of transactions, and how does one prevent windfall profits from occurring?
- Is a buyback or an IFQ a better way to reduce over-capacity? Does you answer differ based on the circumstances surrounding an individual fishery?

Answer. Certainly with any rationalization program including IFQs, the industry is in a better position to de-capitalize the fishing and processing efforts without public funds. Loans are appropriate to help expedite the de-capitalization, but can be paid back from those that remain in the fishery. If the industry is funding any buybacks and assumes the financial liability of such buybacks then certainly the industry should benefit from any additional profits or efficiencies resulting in a rationalized fishery.

Question 2. The NRC report identified concerns that high-grading might occur in IFQ fisheries. Since the issuance of that report, have any studies shown high-grading to be a problem in IFQ fisheries?

Answer. I do not know of any studies regarding high-grading in any fishery. This would be very difficult to document if this was happening.

Question 3. Massachusetts fishermen, like many small fishermen, do not believe that it is possible for a Council to allocate quota fairly in an IFQ systems. This belief stems primarily from their experiences under the current fishery management regime and concerns about conflict of interest in Council decisions.

- How can better accountability and fairness be built into any process to design and allocate an IFQ system?
- Have conflicts of interest in the Council (or other systems you are familiar with) been a particular problem in establishing IFQs?
- Could we address this allocation fairness concern through use of a neutral entity—at least until conflict or interest rules are shown to be effective?
- Are there any models that we can look to?

Answer. I think the North Pacific Council has addressed allocating quota in a fair and reasonable manner for harvesters. There will never ever be 100 percent consensus on allocative issues, but if the industry wants to enjoy the benefits of a rationalized fishery, they will find a way to come to reasonable consensus. Clearly, there has and always will be conflict of interest concerns at the Council process.

This is an issue that will probably never go away, but I feel the benefits of having knowledgeable Council members far outweigh the conflict of interest concerns.

Question 4. It has been suggested that the concepts of area management and fishery cooperatives could be combined to provide communities with both flexibility and predictability. Perhaps a fishing community could be given exclusive rights to fish in an area along with a quota on landings.

- Would such an arrangement be workable in practice?
- What concerns need to be addressed in such a system?
- In your experience, are any such systems used in other countries?

Answer. In the North Pacific, community concerns have been largely about maintaining traditional landing patterns and history that they historically have had and do not want to lose in a rationalized fishery. Especially in remote parts of Alaska, harvesters, processors and communities have all invested heavily in the various fisheries. Communities have never fished or processed and have not expressed an interest to do so. The best way to protect the communities is to protect a healthy processing sector within those communities and assure traditional landings are not jeopardized if a particular fishery is rationalized. There has been growing support particularly in the Bering Sea crab fisheries for a two-pie regionalization / rationalization program. This allows for fishermen to receive IFQs, processors to receive processing quota IPQs, both regionalized to areas where both processing and harvesters have traditionally landed and processed their catch. This allows both harvesters and processors to enjoy the efficiencies and benefits of rationalization while at the same time protecting the traditional landing ports for the communities.

Public funds have been invested in the ports and infrastructure to help both processors and harvesters prosecute these fisheries. A huge amount of private funds have been invested in the processing and harvesting sector to develop, Americanize and fully utilize various fisheries throughout the North Pacific. All sectors (communities, harvesters, processors) should be allowed to enjoy the benefit of rationalization and not be victim of rationalization.

Question 5. As you know, the NRC report addressed the question of processor shares. First, the NRC found that there was no compelling reason to include or exclude processors from initial allocation of harvester quotas, and recommended leaving it to the Councils to decide whether a mechanism is needed to address any unacceptable disadvantage of an IFQ to processors (such as buyouts). They generally cautioned against allocating quota to processors because it would result in making the IFQ program too complex. In addition, the NRC found there was no compelling reason to establish a separate, complementary processor quota system (the "two-pie" system).

- Do you think the NRC panel got this right?
- S. 637 allows only harvester shares—I don't see any compelling reason to change that prohibition—do you?

Answer. I think the NRC got it wrong. First of all, processing shares allocation would be very simple and a lot less complicated than harvesting shares because of the fewer number of processors than harvesters. If public policy is that 100 percent of the value of various fisheries should go to the harvesting sector then they have it right and no consideration should be given to processors and dependent communities. I do not believe that is right or good public policy. For over 25 years, the industry has been encouraged by Congress and the North Pacific Fishery Management Council (NPFMC) to develop, Americanize, and fully utilize various fisheries in the North Pacific, resulting in hundreds of millions of dollars invested with both public and private funds. Harvesters could not have done it alone without processor expansion and investment. Processors could not have accomplished the expansion without ports, harbors and infrastructure investment from fishery-dependent communities. Harvesters, processors and dependent communities all got here together and all should be a part of the future. What the NRC is basically saying is a vessel owner who may have not been on the water for the past ten years should be awarded 100 percent of the value and efficiencies of a rationalized fishery while the investments of processors and some dependent communities are left stranded in remote ports in the North Pacific. Unless both harvesting and processing sectors are equitably rationalized together, the processing sector will immediately be devalued resulting in a steady deterioration of their business and steady deterioration of the economics, employment and tax base of the dependent communities where those processors are located.

I believe these are compelling reasons why processor shares must be authorized to assure viable industry under any sort of rationalized fishery.

Question 6. In a September, 1999, report to the North Pacific Fishery Management Council by Dr. Halvorsen of the University of Washington it is reported that Trident Seafoods controlled nearly 55 percent of the catcher vessels that participate in the pollock co-op that delivers to Trident under the American Fisheries Act (and 88 percent of the catch). Other processors that were given co-ops under the American Fisheries Act have similar levels of catcher vessel control.

- Given that processors who own or control catcher vessels would likely receive IFQ shares for those vessels even under a harvester IFQ, I would like to know why you feel that processors should also receive Individual Processing Quota (IPQ) shares as well. It seems to me that if you have both IFQs and IPQs what you are really doing is giving independent catcher vessels only one-half a piece of the pie, with the processor getting the other half, while for processor controlled boats you get a full piece of the pie. Do you disagree?

Answer. Under any rationalization program, no sector should be discriminated against based on whatever history they have, whether it is harvesting, processing or both. Once harvesting and processing quotas are initially allocated, if Congress wants to limit, control or cap ownership in any sector to assure there is no excessive share or control, they could and should do so.

Processing companies that have invested in harvesting vessels should get the same rights and privileges as other harvesters and processors. Ownership goes both ways. One of the major crab processors in the Bering Sea is owned by fishermen. I do not believe they should have to divest in either harvesting or processing to enjoy the benefits of a rationalized fishery. Their investment, just like some processors that have invested in harvesting, was done legally and should not be devalued as a result of rationalization.

It's ironic that the biggest fear that is being perpetuated by some is the ownership of harvesters by processors and the perceived control they will have. In fact, if IFQs are allowed without processor quotas, those same companies will be the only surviving processors and those companies that have depended on independent fishermen for their supply of fish will be the first to go out of business leaving only those processors that also have substantial harvesting rights as the only viable market for independent fishermen. In fact, some of the same proponents of this concern were the first to sell their pollock catcher vessels to processors at twice the market value they could have received from other harvesters once the American Fisheries Act (AFA) was enacted. If they are so concerned about processor ownership of harvesting vessels, why didn't they sell out to willing non-processor buyers?

Congress and the Councils could and should control excessive shares in both harvesting and processing once initial allocations of quota are issued, but neither sector should be penalized for their existing investment in either harvesting or processing.

ROBERT D. ALVERSON ON BEHALF OF THE FISHING VESSEL OWNERS' ASSOCIATION (FVOA)
May 14, 2001

Hon. OLYMPIA J. SNOWE
The United States Senate,
495 Senate Russell Office Bldg.,
Constitution and Delaware Avenues, N.E.,
Washington, DC.

Dear Senator Snowe:

The following comments are made on behalf of the Fishing Vessel Owners' Association (FVOA). They address the proposed Senate amendments to the Magnuson-Stevens Act. The FVOA is a trade association founded in 1914 dedicated to groundfish longline issues. The Association's vessels operate from off the coast of California to the waters adjacent to Russia in the Bering Sea.

The Association supports Individual Fishing Quotas (IFQs) as a management tool for use by the Regional Fishery Management Councils. The Association also supports Individual Processing Quotas (IPQs) as management tools that should be made available to the Regional Councils. While IFQs and IPQs should both be available, neither should be mandated. The Association continues to support the IFQ program for halibut and sablefish in waters off Alaska and the more recent sablefish "tiered" IFQ program unanimously supported by the Pacific Council. The latter proposal is currently working its way through the regulatory process in Washington, D.C.

The Association believes there are adequate safeguards for establishing limited entry programs, including IFQs, in the Magnuson-Stevens Act. The Association sup-

ports the Regional Councils retaining their current flexibility in dealing with policy issues concerning IFQs, such as ownership and use restrictions, leasing, selling, local community concerns, and small vessel and large boat concerns. Every fishery has a unique quality to it. There can be important cultural as well as resource issues that a Council may want to address with an IFQ. The issues differ in each region and each Council will certainly have various degrees of concern. IPQs would require new legislation that would have to be carefully thought out.

Ms. Linda Behnken stated before your Subcommittee on May 2, 2001, that the Halibut/Sablefish IFQ program had been liberalized since its first inception, and she suggested this was something to avoid. These comments were presented within the context of small vessel operators and crew participation. In reality, the NPFMC has not liberalized the Halibut/Sablefish IFQ program relative to either one of these concerns since 1992, when the program was initially voted on, nor since implementation of the program in 1995.

The Council has taken two significant actions to tighten restrictions on vessel owners, and to make provisions for new entrants into the fishery. The first action taken was the "block" program, which defined quota shares allotted in units less than 20,000 pounds as being in a special category. This category of quota has certain ownership limitations, such that no one can own more than two blocked units in any given management area. This program is designed to keep a number of small units of IFQ in the market, so that crew members or new IFQ holders could readily buy their way into the fishery. This amendment also discourages large IFQ holders from purchasing blocked quotas. Blocked quota is more difficult to buy and sell than unblocked quota, therefore, large quota holders tend not to bid for it, which obviously helps new entrants and people with small holdings of IFQs.

The second amendment taken by the Council required a minimum ownership in a vessel of 20 percent in order to hire a skipper. Prior to that, the requirement to have ownership in order to hire a skipper could be as low as 1 percent, which may have encouraged absentee ownership. The 20 percent rule puts a significant burden on anyone who hires a skipper, therefore, ensuring a more hands-on operation and discourages "sharecropping".

Ms. Behnken failed to give specifics when she made her statements, because there were no specifics to support her testimony. It is true that Ms. Behnken has petitioned the Council for a more stringent level of ownership or elimination of hired skippers altogether. The Council has not supported her request entirely. Just because the North Pacific Council did not support her proposal, does not mean the program was liberalized.

Mr. Don Giles of Icicle Seafoods testified at the May 2, 2001 hearing that his company has been damaged by IFQs. He suggested that the amount of overhead for a processing plant per pound being paid for halibut is less than that for other fisheries. He suggested that fishermen in other fisheries are subsidizing the halibut fishermen's price. Icicle's spokesman also suggested that they have lost market share due to the IFQ program. To FVOA members, what Icicle is saying is that for the last five years, Icicle has been willingly overpaying halibut fishermen in order to get less and less of our product, and not paying other fishermen (salmon, crab) a fair market value.

It should be pointed out that the last three years have been very good for the supply of halibut as Senator Breaux noted during the hearing. The harvest set by the International Halibut Commission have been at near record levels. Notably, Icicle Seafoods has two significant plants, one in Seward, Alaska, and the other in Petersburg, Alaska. Seward is the #3 port in delivery of halibut, representing 12.1 percent of all landings, and Petersburg reports 4.1 percent of all landings of halibut. Icicle Seafoods used to have a buying station in Homer, Alaska, which represents the largest halibut port, or 20.5 percent of the catch. Icicle's plant burnt down; however, they still acquire fish from Homer. With regard to sablefish, Seward is the number one port of delivery, representing 24.6 percent of deliveries, and Petersburg is number 8, representing 4 percent of all deliveries. (See Appendix 1). It may be true that Icicle lost market share; however, should Icicle want more product, all it would have to do is bid the most competitive price. The harvest levels are at record levels, and what is not mentioned is that *many processors have gained market shares. Clearly, for each processor that lost market share, there was a processor that gained market share.*

Prior to 1985, most fishermen in Alaska were not in the race for fish. In fact, the U.S. fleet was still building up and phasing out the foreign operations. Vessels could move from one processing market to another, depending on price arrangements. From 1985 to the mid–90's, the U.S. fleet in Alaska became over-capitalized. The processing capacity that supported this over-capitalized fleet invested in processing and freezing that would allow the entire quotas for groundfish and crab to be proc-

essed in a month or weeks and in the case of halibut, days. The race for fish has become so intense that the fishermen have no time to shop for new markets. This is currently the case for species like crab in the Bering Sea. Those processors, who built the infrastructure to compete in the race for fish, have an incentive to keep the race for fish going. The race for fish keeps fishermen hostage to existing processing markets. IFQs ended that race for halibut and sablefish.

A harvester IFQ program for Alaska groundfish, would restore most of the fleet to pre–1985 with regards to taking the race out of the fishing and being able to have time to develop new markets and reduce overcapitalization through consolidation. New markets can be developed with existing processors as well as new processors with new ideas. However, it should be noted that those processors who resisted change and failed to give the public what they wanted, relative to halibut, (fresh, high-quality fish), lost market shares.

Another point deserves emphasis. Without the sale or lease of IFQs, there can be no consolidation of the fleet. If an overcapitalized fleet cannot consolidate, the race for fish is perpetuated. In fact, such a program would likely be viewed, on the West Coast, as being worse than status quo. In the case of West Coast groundfish, the fishery is horribly over-capitalized. Few people, at this time, would look at buying a vessel and try to make living at fishing in the lower West Coast groundfish fishery. Those currently in the fleet who would like to sell out are not having much success. A non-transferable IFQ program would force people to stay in the fishery. If the allocated amount of IFQ were insufficient to justify operating a vessel, then a person would be without any income and the IFQ would go unused.

The quotas on the West Coast rockfish species have been reduced by 60 percent to 70 percent over the last four years. If the IFQs are saleable, the fishermen can sell out and the person buying can have a larger, economically practicable harvest. Both the seller and buyer see themselves as gaining. A non-saleable IFQ will hurt those fishermen who receive the smaller quotas. If they need to purchase more quota, they will be prohibited from doing so.

If you try and forecast how such a fishery would operate over the next 30 years, the following situation develops. As fishermen retire or die, they or their families will not be able to sell their vessels or businesses. A vessel without fish to catch is of little value. As fishermen retire under such a program, do all the fish then go to the last person standing and what happens when that person leaves the fishery?

Limited Time IFQs. The FVOA opposes any *mandated* time limitation for IFQs. Time-limited IFQs should be an option for each regional council. The Association supports councils having a periodical review of an IFQ program. In fact, the North Pacific Council specifically requests amendments from the public on their Halibut/Sablefish IFQ program once every two years, and provides for an annual report on sales and harvest of the fleet.

The FVOA cautions against short time frames for IFQs. Short time limits for IFQs would work similarly to someone leasing a home or an apartment. Under those circumstances, the person leasing is not generating any equity in their residence. The same would be the case for someone with a limited entry IFQ. A homeowner, who generates equity, tends to protect and improve his or her investment. A lessee does not have that same incentive.

A short term IFQ would tend to encourage the recipient of such a privilege to maximize the immediate harvest of the IFQ and lobby for maximum quotas. This would impede conservation efforts. A long term IFQ program allows the vessel owners to amortize expenses over a longer period of time and not maximize the income up front to cover the long-term expenses. This encourages conservation.

Finally, I wish to emphasize the importance of IFQs to safety. The race for fish kills fishermen. Our pre-IFQ halibut derbies proved that—and the Bering Sea crab fisheries still do. Since IFQs were established, our halibut fishery's safety record has greatly improved. (See Appendix 2). Search and Rescue (SAR) attempts have been reduced significantly. Other fisheries should have that benefit as well.

Thank you for the opportunity to provide these comments.

Sincerely,

ROBERT D. ALVERSON,
Manager.

NATIONAL ENVIRONMENTAL TRUST
May 22, 2001

Hon. OLYMPIA J. SNOWE
United States Senate,
SR–154 Russell Senate Office Building,

Washington, DC.

Dear Senator Snowe:

Thank you for hosting a hearing on Individual Fishing Quotas on May 2, 2001. We appreciate your willingness to take on this very controversial topic within the context of the Magnuson-Stevens Fishery Conservation and Management reauthorization. NET supports the position of the Marine Fish Conservation Network on IFQs and we thank you for your support of a prohibition on non-transferability. On behalf of the National Environmental Trust I respectfully request that this letter and the attached paper be included in the record of the hearing.

We would like to address a point that was repeatedly raised during your hearing. One of the witnesses portrayed other countries' experience with IFQs, including the New Zealand program, as shining successes. The attached document is a copy of an academic paper written by a professor from the University of New Zealand who has witnessed first hand the problems with the IFQ program over its first 11 years. Her observations are in the body of this paper. I recommend it to you and your staff so that your legislation can benefit from the lessons that New Zealand learned the hard way by enacting IFQ programs without strict national standards requiring equity and conservation.

If you have any questions, please contact me at NET, 202–887–1346.

Sincerely,

GERALD B. LEAPE,
Marine Conservation Program Director, National Environmental Trust.

TRADEABLE QUOTA IN PRACTICE: DECISION MAKING, INSTITUTIONS AND OUTCOMES—THE NEW ZEALAND EXPERIENCE OVER 11 YEARS

Catherine Wallace, School of Business and Public Management, Victoria University of Wellington, Wellington, [1] New Zealand, Cath.Wallace@vuw.ac.nz

Abstract [2]

Tradeable quota management systems set out to limit the total catch with the purpose of enhancing both biological and economic outcomes in fisheries, while providing fishers with incentives to care for the resource. New Zealand has had 11 years experience with such a system, introduced in 1986, just eight years after her declaration of an EEZ. The paper explores institutional evolution and decision making and the evidence of fish stocks and environmental outcomes, for insights as to how the expectations of economists, policy makers and others have been matched by the actual outcomes. The paper traces how institutions have evolved in the context of major public sector and microeconomic reforms, one set of commercial players with specified property rights while non-commercial players have none, cost recovery and the move towards quota holder corporations, contracting out and devolution of management to industry. The commercial fishing industry has gained ascendancy in official decision making, this is cemented by a recently announced intention by government to move towards co-management and devolve aspects of fisheries management to the industry. Data problems abound but it seems probable that some fish stocks are in healthy shape, some significantly over fished and many of unknown status with risky catch limit setting. Research effort has been undermined by industry reluctance to pay or to have environmental questions explored. Management has become stratified on fish stocks with little attention to the interactions between fisheries or ecosystem effects, despite a 1996 law change requiring environmental principles in management.

Keywords: Fisheries management, tradeable rights, co-management, New Zealand.

INTRODUCTION

Quota Management Systems: the core theory

The "blackboard economics" of transferable quota management systems look good because they seem to provide strong durable signals to the owners of quota to look after the resource for which rights of access had been assigned to them or which

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[2] All dollar values used in this paper are nominal New Zealand Dollar values unless otherwise specified. In June 1998 US$1 was worth approximately NZ$2.

they have subsequently purchased. The practical experience in places that have used tradeable fish quota is mixed and suggests that most systems need further development (Sissenwine and Mace, 1992; Annala, 1996; Eythorsson, 1996; Sharp, 1997; Hatcher, 1997; and Wallace, 1997). The experience and literature of fisheries policy and economics increasingly stresses the importance of incentives, institutions and governance arrangements (Ostrom 1990, Dubbink and van Vliet, 1996) and the design details of resource management. Ecological economics widens the horizons to include consideration of ecological functions and ethical matters (Folke and Kaberger, 1991). How has it worked in the New Zealand fisheries?

The basic analytics of, and rationale for, a quota management system (QMS) in fisheries is to move from the "tragedy of open access" (the re-diagnosed form of Garrett Hardin's "tragedy of the commons") (Bromley, 1991, 22) and input controls to a system of restricted access to fish. This restriction would be managed by catch limits, known as "output" controls. (Pearce and Turner, 1990; and Scott, 1988).

The basic theory is that with an ownership stake in the fishery and exclusion of excessive effort, the fishers will care for the future of the stocks and no longer feel obliged to "race for fish". The result is better profits for fishers, and under some conditions, higher fish stocks (Anderson, 1995; Pearce and Turner, 1990).

There is a well-established economic literature to the effect that the point of biologically maximum sustained yield will not necessarily coincide with the economically optimum point. Maximisation of economic rents may require that less is caught and so that stocks are larger than if the aim were for the maximum sustainable yield (Larkin, 1977). The literature on institutions and co-management addresses the best means of achieving the cut backs and restraint that are essential for maintaining effort limitation and mutual assurance (Ostrom, 1990; Sen and Nielsen, 1996; Townsend, 1995; Couper and Smith, 1997).

The theory does however predict that if fish stocks are slow growing, of low fecundity, and the catch value and discount rates are high, then it may well be rational in narrow economic terms to "mine" the fish stocks, catch the lot and invest the proceeds. This provides better financial returns than waiting for the fish to grow (Pearce and Turner, 1990).

Consideration of non-market values and the incorporation of preservation and other non-commercial values into decision making suggests that if these other values are included then the optimal fish stock is likely to be higher than the narrowly defined financial optimum for commercial fishers (Pearce and Turner, 1990). Thus, fishing effort should be less, and stocks greater, when ecosystem values are included in the calculus.

These basic elements of the theory point to a number of policy issues to be dealt with in the design and implementation of any tradeable system. This includes: exclusions, allocation of rights, to whom, as percentage shares or absolute tonnage; incentives to cheat or to comply, the problems of multispecies fisheries and environmental aspects of management outside the commercial fishers' interests, institutions for mutual assurance, participation and cooperation, and so on. This paper will engage with just some of these issues. It will explore the impact of the evolving institutional arrangements in New Zealand on the information and research base, TACC and TAC decision making, stock assessment and the state of the stocks, on participation in decision making and legal and political legitimacy.

THE NEW ZEALAND EXPERIENCE

The New Zealand EEZ and prior to the QMS

New Zealand's EEZ was declared in 1978 at a time when the domestic commercial fisheries and their management were almost wholly focused on inshore fisheries and input controls. The means of fisheries management was a licencing system that did little to restrict effort and so resembled open access.

Fisheries management was cumbersome, seemingly inefficient and the transaction costs of fisheries management were deemed to be high with a large number of very small operators and vessels. In 1977 there were a reported licenced total of 5178 vessels of which only 13 New Zealand owned vessels were 30 metres or longer (National Research Advisory Council, 1980, 44). Foreign vessels and later, joint venture charter vessels from abroad were operating in the deeper water (Bradstock, 1979) which led the government of the day launch a campaign to retire some inshore fishing effort and to induce fishers to move into the deeper water of the EEZ (400–1200m). The Minister of Fisheries launched a "think big" campaign with incentives to help people to fish the deeper waters (Habib and Roberts 1978).

In 1983 frustration with the administrative burden of managing fisheries, when so many vessels and owners were operating, led the government of the day to implement a policy of ejection from the fishery all those who gained less than NZ$10,000 (1983NZ$) or less than 80 percent of their income from fishing. The effect of this

was that a very large number of fishers with seasonal incomes from fishing were barred from fishing. There was no attempt at compensation. Maori communities were particularly affected (Cooper ed, 1988, 1989; Waitangi Tribunal, Wai 27, 1992, 282; Memon and Cullen, 1992).

This administrative exclusion apparently caused considerable hardship (Waitangi Tribunal, Wai 27, 1992; Memon & Cullen, 1992), but it had little effect on the level of catch since most of the vessels were very small. Presumably it did help with the administrative burden—but there has been no systematic study of this.

In 1983 a trial quota system was introduced for some deep-water species, with provision in the Fisheries Act 1983 for this and for expansion of the quota system. It was the experience of this that led the government's advisers to then recommend the extension of this quota system to the Quota Management System including the inshore species.

The QMS

Introduced in 1986, New Zealand's Quota Management System (QMS) of individual transferable fisheries quota (ITQ) has now operated for over a decade. There have been a number of descriptions and commentaries, so this paper offers only a potted history of the introduction of the QMS. Previous descriptions or studies of the New Zealand Quota Management System (QMS) include Clark and Duncan (1986), Clark, Major and Mollett (1988), Dewees (1989), Sissenwine and Mace (1992), Memon and Cullen (1992), Annala (1996), Gaffney (1997), Sharp (1997) and Wallace (1997).

Individual transferable fisheries quota (ITQ) was introduced in earnest with the 1986 allocations to individuals of access to 26 species or species groups of fish, each in 10 geographic regions. Rights of access to absolute tonnages were issued in perpetuity. Allocations were grandparented and then fishers in the inshore fisheries were invited to tender back to the Government so that total effort was reduced. Under the QMS the Minister of Fisheries sets Total Allowable Catch (TAC) limits containing Total Allowable Commercial Catch (TACC) limits for each fish stock, the difference being allocations for recreational and customary Maori catch and some estimate of unreported and illegal catch. These allocations were implicit under the 1983 Act, but this has now changed with the 1996 Fisheries Act to explicit provision for these other uses though they are not assigned to individuals.

The objective of fishery management under the 1983 and 1986 laws was management of fish stocks at least to the level that would yield maximum sustainable yield (MSY). By law, social, economic, environmental and cultural reasons can condition the rate of movement to MSY. Environmental controls are required and these have been made more explicit in the 1996 Fisheries Act.

Industry Size and Profitability.

Industry export revenues during the period 1987–1997 have increased considerably, from NZ$790 to about NZ$1.1–1.3 billion (current values). They are subject to the usual demand pressures, exchange rate fluctuations and a variable level of inflation. Much of the increase is attributable to the expansion of the New Zealand fishing industry into the deep water from a predominantly inshore fishery rather than to the QMS itself. Because fishing followed a "fishing down" pattern in a number of deep water stocks (principally orange roughy), and because the frontiers of fishing have expanded within the EEZ, much of the rate of expansion of fishing has been unsustainable. It has been a "mining" process rather than one of catch rates matched to yield. We do not have a counterfactual for what would have happened in the absence of the QMS, nor do we have full figures for the profitability of the industry. What information there is, though, suggests that at least the bigger players have for the most part remained profitable.[3] The number and size profile of vessels has changed. This one would expect when deeper waters are being fished, so that the proportion of larger vessels has increased but the absolute numbers of vessels have declined compared to the beginning of the period (New Zealand Fishing Industry Board, *Economic Review*, and successive years).

During the 1990s charter vessels from other countries caught about half the catch, a change from the pre-QMS days when foreign vessels licensed by the New Zealand government caught most of the deep-water catch. Gradually, two trends asserted themselves. The first was that New Zealand companies increased their fishing capacity. The second that instead of vessels being licensed by government, they be-

[3] This based on an inspection of the reports and *Economic Reviews* of the NZ Fishing Industry Board, the public accounts of Sanfords Ltd, and reports by the Treaty of Waitangi Fisheries Commission for various years.

came, in effect, licensed to private operators as joint ventures or charters—so the proceeds went to New Zealand companies rather than to the government.

In the mid–late1990s, about 90 percent of the total catch was exported. About 30 percent of the export revenues come from species with stocks that are known to be below or considerably below the level that would support the MSY, but not all such stocks of a species may be so stressed. For most stocks, stock biomass is unknown. Much of the expansion of catch during the period since 1986 has been unsustainable.

Quota Transfers and Concentration of Ownership

ITQs are transferable by sale or lease and there are indeed trades, though prices indicate a mixture of arms length and non-arms length trading (Ministry of Fisheries, monthly Quota Monitoring System Reports).

In the 11 years of operation of the QMS there appears to have been considerable concentration of ownership or control of quota, though there are legal limits on quota aggregation and on foreign ownership. The Ministry of Fisheries does not monitor aggregation, which anyway is extremely difficult to track as corporate arrangements intertwine. This concentration probably reflects both market conditions and the government's policy of recovery of costs of fishery management since 1994, which has been largely designed by the bigger fishers. It has placed a share of costs on small fishers which is larger than their share of the total catch because some charges have been based on the number of transactions, vessels etc, rather than the share of the catch.

The one body exempt from the quota aggregation limits is the Treaty of Waitangi Fisheries Commission (Te Ohu Kaimoana). This body was established in 1989[4] after a series of legal and political interventions by Maori who successfully argued that New Zealand's founding Treaty between the British Crown and Maori, the Treaty of Waitangi, guaranteed them their fisheries. Eventually the government did a deal with Maori by which they were collectively allocated 10 percent of the quota, promised 20 percent of future allocations and were given a half share in a large fishing company. In addition, Maori were granted exclusive non-commercial fishing rights.

The Treaty of Waitangi Fisheries Commission has found it extremely difficult to find agreement amongst Maori on a formula for the onward allocation of quota to tribes (iwi) or subtribes (hapu). In the years during which argument has ground on, the Commission has used its income from quota leases to accumulate more quota, with the result that in 1998 it estimates that it owns or controls over 50 percent of the total quota (Pryke, Fisheries Commissioner, pers com, June 1998).

The Treaty of Waitangi Fisheries Commission's holding is part of the commercial quota, and this is distinct from the allowance for customary Maori fishing which has never been well researched or quantified but has been allowed for, first implicitly, now explicitly.

There is increasing pressure from parts of the fishing industry and from within the Ministry of Fisheries to remove quota aggregation limits and to remove controls on ownership by foreigners who have hitherto been restricted from owning of quota.

From Absolute to Percentage Shares

In 1990, the fiscal burden of the need to buy back quota from fishers where the catch rates had been set too high was recognised to be too heavy. For example, with Chatham Rise orange roughy TACC adjustments would have required over $50 million in Government revenue for the buy-back. As a result of analytical work by Lee Anderson, the quota was redefined from absolute tonnages to percentage shares in the total allowable commercial catch (TACC) and a major amendment to the Fisheries Act 1983 was passed in 1990.

Resource Rentals and Cost Recovery

In 1995, after the suspension of resource rental payments, a system of industry "cost recovery" charges of about 70 percent of fisheries management and research costs were introduced. This was asked for by the industry as a replacement for an earlier system of resource rentals. The cost recovery system has driven several major changes. It is often difficult to separate the effects of the QMS per se from the effects of the cost recovery regime.

The cost recovery system was based on the notion of "avoidable costs". In the context of the government's more generalised move to "user pays", the "avoidable cost" principle requires the industry to pay for those costs which would not be incurred if the industry were not there.

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[4] As the Maori Fisheries Commission.

The resource rental revenue had always returned less than fishery management and research costs. They rose from very low initial levels when the QMS began to about NZ$22 million in 1988/89 when fisheries management cost about NZ$32 million (not including sales tax). But even then much of the revenue did not stay with the government. From October 1989 to September 1995, the government returned to fishers NZ$128.5 million as compensation for TACC reductions during this period (Ministry of Fisheries, 1997a).

The government gave up resource rentals under joint pressure from Maori, who contested the government's ownership of fish, and hence the legitimacy of its collection of rentals, and from the industry. The government has never taken the revenues it had hoped for from the fishery. Resource rentals were levied per tonne and were never more than 2.8 percent of total export revenues. Much but not the entire quota was grandparented.

When, in 1992, under pressure to do so by the fishing industry (NZ Fishing Industry Association, 1992), the government decided to adopt cost recovery, it expected to get NZ$53 million annually, to retain resource rentals of NZ$20 million annually, and to gain once-off revenue of NZ$133m from tender of further species into the QMS (Cabinet Minute 23 Nov 1992; Ministry of Fisheries 1997a). In practice the government gave away the resource rentals to the industry as compensation for TACC reductions from 1989–1995, it is grand-parenting new quota, and has only levied about NZ$33–36 million in cost recovery charges. This is considerably less than the government imagined, and also less than the industry offered in 1993 to pay. Official records record an industry agreement to pay a sum of NZ$47 million in cost recovery payments and NZ$66 million for new quota (Ministry of Fisheries 1993). In the years since cost recovery was actually introduced, the industry has exerted huge pressure to whittle down the sum. This has been done by challenging the principle of avoidable costs, by pressuring for and achieving a Parliamentary inquiry into cost recovery, and by challenging each line item in the budget of the Ministry of Fisheries. Research projects and budgets have been particularly hard hit. Overall, the annual cost recovery for fisheries management and research has been less than 3 percent of total export receipts.

The Dominance of the Industry

A forceful impact of cost recovery has been in the industry's own perception of its political place. In possession of quota, the only set of defined rights, the industry has tended to consider its rights as pre-eminent in any dispute with other stakeholders such as recreationalists or environmental organisations. The cost recovery process has strongly reinforced this view, both in the minds of the industry participants and many officials and politicians.

The industry believes that if it is subject to cost recovery then it should have the dominant voice in both what is done by the Ministry and how—or better still, that it should itself be allowed to under take this work (New Zealand Fishing Industry, 1997, 7). This has become known as "user pays means user says".

This position of the industry and some in government is strongly contested by most of the other parties to fisheries management. Environmental organisations for instance argue that the polluter pays principle does not imply that polluters should run the ruler over the pollution control agency or take a position of having the dominant say in what the agency does. Nor should they be able to closely influence which contracts are let to undertake the research (distinct from monitoring). Environmental organisations consider that all stakeholders should be heard but that the industry should pay since the essence of fishery management is to improve the resource rents in the fishery and to protect the fish and the environment from the impacts of fishing (Environment and Conservation Organisations et al 1997).

Recreational fishers also oppose the assumption of greater influence and control by the industrial fishers since they see them as adding less value, as having less "merit good" qualities and as using methods such as trawling that are intrinsically more damaging than many methods of recreational fishing.

The 1997–98 Parliamentary inquiry (Primary Production Select Committee, 1998) has resulted in a majority recommendation that the industry be given more control of fisheries management services and be allowed to undertake some of them itself (Primary Production Select Committee, 1998). The Cabinet too has decided to devolve to the industry the running of core quota registry databases (quota holdings, vessel ownership, catch etc) and to allow the industry to do research and other services on contract to the government or instead of the government commissioning these services. Organisations in the environmental, recreational fishing and scientific community oppose these changes (submissions to the Primary Produce Select Committee 1997; submissions to the Minister of Fisheries on Ministry of Fisheries, 1997c), seeing them as a process of industry capture of fisheries management dis-

guised as co-management. They see themselves being progressively shut out of decision making as quota holding companies assume fisheries management functions and do research.

The fate of the quality of data and research has become a particularly contentious point. Quality information is vital to the quota management system. Non-industry stakeholders expect the research to be increasingly industry client driven rather than independent. The Ministry considers that it can control standards by contract specification and monitoring but other participants doubt this.

Decision Making Sequences

Fisheries management in New Zealand has evolved a series of decision processes, which in practice have become highly compartmentalised. The Ministry is now saying it wants greater integration of these processes and Cabinet has approved this.

Researchers report on stock assessment or other research projects in annual stock assessment working groups and plenaries to which stakeholders are invited. For the most part those who attend are from the Ministry, the research provider or from industry—usually only one environmental non-governmental organisation (NGO) if any can attend. Recreational fishers and customary Maori fishers rarely attend—partly because of the enormous time commitment required. The non-industry stakeholders are for the most part employed in other occupations and as voluntary organisations cannot attend long meetings stretching into days and weeks. Such meetings are however a feature of New Zealand fisheries management.

Annually too there are meetings of a Research Coordinating Committee which discusses with the Ministry the future research needs. The non-industry science providers have been excluded from these meetings. The result is that the industry-hired scientists are able to have a considerable influence on the research agenda with the scientists who have done the work, principally from a state owned institute, unable to defend against any aspersions cast on their work.

Environmental organisations' attempts to widen the research agenda from fisheries stock assessment to environmental assessment, the investigation of and control of the impacts of fishing, and the need to create no-take areas have had very limited success. Attempts to persuade the Ministry to mount a research agenda covering the operation of the Quota Management System, and legal, policy and compliance research have also failed (Environment and Conservation Organisations 1996). This lack of non-biological research seems to be in part a matter of habit by the Ministry, in part pressure from industry to avoid research that leads to unwanted answers and in part a reflection of cost cutting. The budget pruning is not just because of the usual government restraint but because of the "cost recovery" policy. This requires the industry to share the costs of fisheries management and research —so the industry is quick to pressure for proposed research projects to be dropped.

In 1986 when the QMS was introduced, fisheries management was conducted by one branch of the Ministry of Agriculture and Fisheries, fisheries research by another. Public Sector reforms (Boston et al, 1991) generally and fishing industry pressure in particular have seen an evolution of this integrated administrative arrangement into separated parts and institutions. The fisheries researchers were sent off to a state research institute, the fisheries management side separated from Agriculture into a Ministry of Fisheries.

In common with much of the rest of the New Zealand public service, many functions are now no longer done by officials but are contracted out to the private sector or to state research agencies. Since 1995 the Minister of Fisheries has commissioned a range of services from the Ministry, from research providers and others. This process has become increasingly formalised and elaborate. One reason for this has been the prevailing culture of public service managerialism and internal contracting and specification. A further reason has been escalating demands from the fishing industry for detailed specification of spending so that they can contest the costs of fishery management and research—of which they pay on average 70 percent.

The Ministry runs its various consultation processes both at a regional and a national level—but to become a full participant organisations have to be Ministerially approved parties to consultations. National consultations are typically lopsided in participation. Commonly there are 10–20 industry members present, 1–2 environmental representatives and 1–10 recreational representatives. Maori with commercial interests are represented via the Treaty of Waitangi Fisheries Commission, but customary Maori are on a different track of consultations altogether.

The process of consideration of the fishery management and research services and the attendant process of cost recovery, has become a powerful driver of industry control over the Ministry and its work, though the industry considers the Ministry unresponsive to its demands. Fishing industry members see their demands as entirely reasonable accountability. Environmental and recreational fishing organisations see

the system as a short route to industry capture of officials and the Minister and believe that these decision-makers are excessively influenced by the industry.

At issue is a fundamental difference of viewpoints. Industry participants see themselves, the quota holders, as the primary "clients" of the Ministry. As quota holders, export earners and revenue generators they perceive themselves to have greater political and legal rights and legitimacy.

By contrast, environmental and recreational organisations consider that the industry is one among a number of users, albeit the one with well defined rights, and that the Ministry should be far more vigilant than it is in its role as protector of the environment and of other interests in society. From this viewpoint, industry influence on decision making is excessive and amounts to capture of the regulators by the regulated.

Devolution and Co-management

In 1997 the government decided on further changes aimed at devolving to the fishing industry a number of key aspects of fisheries management and research. In 1998, under pressure from the fishing industry over the cost recovery system of charges, the government suspended the implementation of large chunks of the 1996 Act (but not the environmental requirements). The intent is apparently to hand over much more of the operation of the quota management system to the industry and to integrate decisions on catch limits, research and other spending. The changes by the government are in part a reflection of a strong disposition to minimise government and government spending. For some involved though, there is an implicit move to combine ITQs with co-management principles. Commercial fishers themselves are forming quota holding associations and companies. As of mid 1998 there were 21 quota holders groups of various kinds, each related to a different fishery.

Only in one or two cases are there effective governance arrangements in place. One, the Southern Scallop Enhancement Company has achieved a system of internal contracts such that they have agreed to fish at a catch limit lower than that set by government. But they have also opposed a reduction by the Government to this lower, more sustainable, level. The company has penalties for reneging on agreements. For the most part, the other groupings are much looser associations. Effective internal discipline has not been achieved, though the organisations are used for advocacy to government and within national industry organisations.

Further Specification of Rights of other Extractive Users

There has been strong pressure from commercial interests on the government to create and confine explicit property rights for recreational fishers. The commercial fishers are anxious for recreationists to share management costs. Customary Maori fisheries management and fishing is in the process of much clearer definition in regulations. This is a joint product of the greater specification of extractive rights and of a more general recognition in New Zealand of Maori right to access resources.

Stocks and Catch Limits

Fish stock health may have been helped by the QMS—but the reality for New Zealand is that for the most part we just do not know. It is probable that the QMS is helpful but not sufficient. TAC and TACC setting is prone to strong industry pressure for the elevation of catch limits or resistance to catch reductions. Even when there are strong recommendations from independent scientists for easing of fishing pressure, fisher representatives have been reluctant to agree.

In the case of the northern snapper stock, the Minister tried in successive years to reduce the TACC to 3000 tonnes from a limit of 4938 tonnes. This was in order to allow the stock to rebuild since it was judged by the stock assessment plenary to be just over half the size to support MSY, the legal target (Annala and Sullivan, 1997a). Industry responded with a series of legal injunctions to prevent TACC reductions and to gain compensation from the government should reductions be allowed.

The Court of Appeal (CA82/97 & 83/97 Tipping J—NZ Fishing Industry Association and others vs Minister of Fisheries) eventually overturned the Minister's decision to reduce TACC on a relatively minor point of procedure. The Court dismissed key arguments made by the industry that their property rights were absolute (p16) and the argument that the Minister had no ability to change the shares of the TAC between commercial and recreational sectors. On the question of the extent of the property rights the Court said:

> "While quota are undoubtedly a species of property and a valuable one at that, the rights inherent in that property are not absolute. They are subject to the provisions of the legislation establishing them. That legislation contains the capacity for the quota to be reduced. If such reduction is otherwise lawfully made,

the fact that quota are a "property right", to use the appellants expression, cannot save them from reduction."

This judgement makes clear the adjustability of ITQ entitlements.

On the question of the relative shares of the TAC, the Court ruled that the Minister had discretion to change the relative shares of the commercial and recreational sectors to the TAC, indeed that there is no requirement of proportionality in the 1983 or 1996 Acts. The court concluded that the law simply required the Minister to allow for each sector. This argument of proportionality is never invoked by the industry when the TACC is proportionately increased. In essence, the Court concluded that justice was done if due process was followed and the required matters considered in decision making. The Court further decided that the Minister is entitled to bear in mind changing population patterns and population growth (ibid, p18) and to cater for increased recreational fishing pressure.

Industry opposition to TAC and TACC reductions or pressure to increase catch limits in the face of evidence that suggests declines in a stock seems to be a continuing part of industry behaviour. The ratchet effect of industry pressure can be seen in the 1997 round for setting catch limits and other controls. Of the 36 stocks discussed, the industry wanted catch limits increased for 5 for which limits were proposed to be left unchanged. They resisted proposals for limit reductions in 11 cases, advocated a lesser cut than proposed in 2 cases and wanted an increase for a further 3 stocks which the Ministry proposed to hold or increase. For 15 stocks the industry accepted no change. In no case did they propose a cut when one was not already suggested (Ministry of Fisheries, 1997b, 56–59). This pattern is familiar and can be found in other years. The main exception to this pattern has been the case of hoki where a segment of the industry fears that the elasticities are such that any increase in quantity on the market will depress total revenues. Thus a majority of fishers regularly oppose catch limit increases for hoki even when stocks look robust.

The upward ratcheting behaviour suggests that industry discount rates are high—higher than that of other extractive users and non-extractive users of fisheries resources. The high discount rate drivers appear to be related to a range of joint inputs—such as vessel loans.

Changes in the law introduced in 1996 are aimed at making ITQs more bankable. One effect of this appears to be that fishers have become even more resistant to TACC reductions because their ITQs are part of their bankable assets and any reduction in tonnages represented implies a loss of asset backing for loans. Increased bankability of ITQ appears to be translating into greater risks to stocks.

The capacity of the New Zealand Quota Management System to achieve environmental goals as not been demonstrated. Fish stock sustainability is unknown in the majority of cases. A few are thought to be at or above MSY, some are known to be well below it (eg most orange roughy stocks). For most, the state of the stocks just is not known: fisheries catch limits are often set on the basis of previous catch with little extra known. The National Institute of Water and Atmospheric Research, the government owned institute which houses the bulk of the fishery scientists, estimated in 1997 that of a total of 150 QMS stocks involving 30 species, 56 percent had stock status unknown with respect to MSY. The original biomass had been estimated for only 17 percent and current biomass and the biomass that would support the MSY was known for only 11 percent though the maximum constant yield had been estimated for 67 percent of the stocks (NIWA, 1997).

Annual stock assessment documentation for the 1998–99 fishing year (Annala and Sullivan, 1997b, Annala et al 1998) reveals that of the 187 stocks in the quota management system current biomass is known for only 25 stocks (13 percent) and 13 of these (over 50 percent of known stocks) were below the biomass that would support the MSY. While there are other yield estimates for 55 percent of stocks, three-quarters of these are estimated from averaging catch. For 45 percent of stocks there are no estimate of biomass or yield. Of the 90 new stocks to be added to the QMS on 1 October this year there are no estimates of yield or current biomass for any of these stocks.

Research

Despite the large gaps in knowledge, research effort meanwhile has decreased significantly. There are two main reasons for this. One is a cut back in deep-water species research trawls; the other is the system of cost recovery that New Zealand has used. One effect of the cost recovery policy has been a marked industry reluctance to agree to research: despite economic theory predictions that the industry would be concerned about the resource once they owned quota. Research funding has been slashed since the early 1990s.

The Fisheries Research Budget, unadjusted for inflation, and minus the contracting costs since 1994/5 has been cut from NZ$22.75 million in 1991/2 to $13.34 million for the 1998/9 year as in Fig. 1.

Fig. 1 Minister of Fisheries Research Budget, $NZ million, nominal values, excluding contracting and data management costs.

Financial Year	1991/2	1992/3	1993/4	1994/5	1995/6	1996/7	1997/8	1998/9
Budget NZ$m	22.75	21.34	19.40	19.03	17.31	14.45	13.13	13.34

Source: Annual appropriations to, and approvals by the Minister of Fisheries.

These are the budgets for research projects commissioned to assist the Minister of Fisheries in decision making under the Fisheries Act. They do not include research on fisheries impacts on conservation portfolio issues (seabirds and marine mammals—typically about $0.8 million), nor figures for research undertaken privately by the fishing industry, fisheries research funded by universities or other by other public agencies. A figure between NZ$400,000 and $700,000 should be allowed for the costs of contract management. A small part of the decrease in research funding can be attributed to research programmes that the industry has commissioned directly and which have been displaced from the Minister's commissioned work—but this would be less than NZ$500,000. In 1993/4 fishing companies commissioned about $NZ11.2 million of research but most of this was for market and product research and exploratory fishing, not for stock assessment or sustainability purposes (FORST, 1994; 11).

Quota owning does not seem to have created strong incentives to care for the stocks. Industry opposition to spending money on research or controls on the environmental effects of fishing has been strong. In successive years, industry submissions have cited a variety of reasons for opposing research on the adverse effects of fishing on the environment. Few proposals have survived this industry opposition.

The Environment and the Fisheries Act 1996

A series of legislative amendments occurred during the 1990s most of which related to the mechanics of the quota system, ITQs, balancing and so forth. A whole new Fisheries Act passed in 1996 has more explicit environmental requirements and the purpose (s8) is "to provide for the utilisation of fisheries resources while ensuring sustainability".

Officially New Zealand fisheries management is conducted within the framework of environmental constraints (Fisheries Act 1996 sections 5,8 and 9; Ministry of Fisheries, 1996). Though this is indeed a mandatory requirement of the Fisheries Act 1996, the attention given to those requirements by the Ministry and Minister of Fisheries is rhetorical rather than real.

An official publication recently summed up some of the concerns about the Quota Management System's environmental limitations prior to the new Act:

> The other important environmental question about the QMS concerns its impact on non-target species and their ecosystems. Until the recent passing of the Fisheries Act 1996, the QMS had been relentlessly single-species in its focus, with each stock managed in isolation from the other species in the environment. When for examples, a stock was reduced by two-thirds to boost its yield, no account was taken of the other species in its environment." (Ministry for the Environment, 1997, 9.75).

The 1996 Act has a more comprehensive purpose and principles section (see the boxes) than the 1983 Act. This spell out more particularly matters that must be had regard to. By June 1998, 20 months after the coming into effect of these sections, the Ministry of Fisheries still had not published discussion papers on the meanings of the terms or work out how these terms are to be given operational meaning[5]. There is little evidence that the purpose and principles of the 1996 Act's are actually informing or guiding decisions on fisheries management or research, though these are often referred to in official statements.

In the 1996/7 and 1997/8 rounds of consideration of catch limits and other sustainability measures, no provision was made in the consultation documentation for the mandatory environmental principles under the Act (section 9). Nor was there any explicit (or detectably implicit) consideration of the needs of future generations,

[5] The Fisheries Act Implementation Project has addressed a wide range of issues and calls for such working papers to be developed. These were not given priority in the work plan and at the time of writing had not appeared.

which is a consideration required at the core of the sustainability provisions in the purpose of the Act. Section (8) also requires the avoidance, remedying or mitigation of any adverse effects of fishing on the aquatic environment but no mechanics have been created to achieve consideration of these. This language is familiar in New Zealand since it is borrowed from the New Zealand Resource Management Act 1991, and there it has judicial force.

Neither since the Act was passed has there been provision of substance made in the budget for either of the financial years 1997/8 or 1998/9 for substantial inquiry, research or policy advice on these matters. The Ministry of Fisheries in the 1998 consultation document on catch limits and other sustainability measures for the 1998/99 fishing year (Ministry of Fisheries 1998a) provided no regular or systematic consideration of potential or actual adverse effects of fishing methods, fishing in particular areas or ecosystem impacts. Though for several years environmental organisations have pressed for attention to these matters, no system for review of impacts of fishing on any but commercial fish stocks and high profile marine mammal and seabird populations has been established.

The budgeting figures approved by the Minister in June 1998 (Ministry of Fisheries, 1998b) allocate just NZ$4000 (about US$2,000) for operational policy advice to the Minister during the 1998/99 fiscal year (July–June) on the needs of future generations. The provision for operational policy advice on the adverse effects of fishing on the aquatic environment (distinct from effects on fish stocks) was just NZ$73,000—somewhat less than half the allocation for advice to the Minister on statutory appointments, which are few. It is a very small sum compared to the NZ$1.3–1.6 billion gross revenues from fishing industry exports and local sales. It is a very small figure indeed to give policy advice on fishing impacts in an Exclusive Economic Zone (EEZ) of 483 million hectares.

Environmentally relevant provisions of the Act are set out in fig. 2.

Fig. 2 Two environmental sections of the Fisheries Act 1996

Part II: Purpose and Principles

Section 8: Purpose:

"The purpose of this Act is to provide for the utilisation of fisheries resources while ensuring sustainability."

"Ensuring sustainability" means

(a) Maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and

(b) Avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment.

"Utilisation" means conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural well-being.

Section 9. Environmental Principles—

"All persons exercising or performing functions, duties, or powers under this Act, in relation to the utilisation of fisheries resources or ensuring sustainability, shall take into account the following environmental principles:

(a) Associated and dependent species should be maintained above a level that ensures their long term viability:

(b) Biological diversity of the aquatic environment should be maintained:

(c) Habitat of particular significance for fisheries management should be protected.

International Obligations Relating to Fishing

The Act further requires that fisheries management be consistent with New Zealand's international obligations relating to fishing. The Ministry has refrained from clarifying what it considers to be included in this category of obligations—but has only asked for funds for work relating to fishing agreements and trade agreements. Environmental organisations consider that the category includes the UN Convention on the Law of the Sea (UNCLOS), the Convention on Biodiversity (CBD), Agenda 21, CITES and such global or regional agreements which though not fishing agreements never the less relate to fishing. Regional agreements include the Convention on the Conservation of Southern Bluefin Tuna and the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific. To the extent that these contain requirements for environmental care, then New Zealand decisions must be conditioned by these requirements. While Australia has prepared a report on its international obligations, New Zealand has yet to tackle this (Herriman et al, 1997).

The Treaty of Waitangi

The Act also requires consistency with the 1992 Act that cemented the deal between Maori and the Crown in which quota was given to Maori along with the share in the Sealords company. There is not space here to explore this dimension of the Act further since it is rather complicated.

Information

The information principles require decisions to be based on the best available information (s10(a)), require decisions to reflect uncertainty (s10(b)) and contain the essence of the precautionary principle (s10(c)&(d)).

The industry has frequently opposed research projects and then argued that TACC reductions should not occur because there is no evidence of a problem. This subsection seems designed to halt such risk taking behaviour. In discussions on fisheries management decisions since the Act was passed debate has turned to this section of the Act, but it is not clear that any specific decision has been moderated by it. The industry in turn has argued that since the purpose of the Act is utilisation of fisheries resources, any uncertainty about stocks or the environment should not be used to limit catches. It is this author's view that that is a misinterpretation of the Act. There is also a dispute between the Ministry of Fisheries and environmental organisations as to whether provision for non-extractive uses is required.

Fisheries management under the QMS depends crucially on the quality of the information on catch, effort, catch against quota, and other data. A major issue to emerge in the New Zealand moves to devolve research and the administration of the quota management databases to the private sector and the fishing industry, is the effect that this could have on the quality of information. Non-industry participants are united in their apprehension that crucial data may be contaminated, biased or become inaccessible to other parties.

Enforcement and Compliance

One of the motivators for the move from a regulatory approach to a self-management approach is the concern that this may improve compliance. On-the-water enforcement is very expensive for a country with a long coastline and large EEZ. For this reason the QMS supposedly uses a "paper trail" approach where fishers must sell product to a licenced fish receiver and record keeping by all parties in the chain is supposed to make cheating difficult. Human ingenuity is such that a number of schemes for non-compliance have flourished. Further, the Ministry of Fisheries' effort at enforcement and auditing all but collapsed so that in 1997 there was only one chance in 50–100 years that an audit would be done on any operator. Cheating, high grading, dumping and illegal sales have not disappeared. An amendment to the regulations in 1997 now requires that fishers provide privately commissioned audits of their books. The government hopes that quota owner associations or companies will provide a system of industry internal enforcement.

CONCLUSIONS

As always, the New Zealand experience of the quota management system is in evolution. What can we say about it so far? Since we do not, by the nature of the experience, have a counter factual as to what would have happened if New Zealand did not have a QMS, it is difficult to be too dogmatic about the outcomes. It is probably safe to say that the QMS and more recent evolution towards quota holder groups may have helped to diminish the tragedy of open access. It is clear though that on its own it is insufficient to provide good environmentally safe fisheries management.

The QMS may have helped but in other ways it has posed its own quite serious problems. It is probably also safe to say that the QMS has intensified the stratification of fisheries management into single stock management. One effect has been that both officials and industry came to see area, method or other input controls as illegitimate—albeit many such have remained on the books, largely unenforced. This has meant that particular human and ecological communities have suffered considerably from hot spotting of environmental effects and local depletion or habitat degradation.

The QMS has also provided for very lop-sided decision making and political dynamics because of the distortion to the legal and political position of commercial fishers with legally defined rights against other users and the environment itself. This has had pernicious consequences for the environment, for other users, extractive and non-extractive, and for the future. Co-management arrangements may strengthen management of stocks that are not subject to pressures to mine them but are subject to the race to fish. Such governance arrangements will not in the

end remove the pressures to mine a resource when stock recovery rates are low, prices high and discount rates are high.

Co-management in the New Zealand context has to a large extent served as a Trojan horse for the capture by the industry of fisheries management at the expense of other users—but the cost recovery mechanism did a lot to assist this process of capture.

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UNITED FISHERMEN'S MARKETING ASSOCIATION, INC.
Kodiak, AK, September 17, 2000

Senator Ted Stevens,
U.S. Senate,
Washington, DC.

RE: LEGISLATION THAT MANDATES PROCESSOR SECTOR IFQS FOR BSAI CRAB RATIONALIZATION

Dear Senator Stevens,

We understand that several participants of the Bering Sea/Aleutian Islands (BSAI) crab industry advocate legislation that mandates the North Pacific Fishery Management Council (Council) to incorporate provisions for the allocation of ownership rights of BSAI crab to the processor sector ("Processor IFQs", or some variation of the "2-Pie" concept). The proponents advocate that such legislation should be passed by Congress within the next few weeks prior to Congressional adjournment. We further understand that Congressional leaders have indicated to the proponents of such legislation that a consensus should be sought and achieved by mid-September from the BSAI crab industry with respect to any legislative proposal that mandates BSAI crab Processor IFQs (we presume that the "industry" refers to processor and harvester sectors, from within Alaska, as well as from outside of Alaska).

The United Fishermen's Marketing Association ("UFMA") represents BSAI and GOA crab harvesters (as well as halibut and black cod longliners, p. cod pot fishermen and salmon and herring seiners), and has represented such crab harvesters with respect to many significant issues that impact the conservation and management of the BSAI crab fisheries. UFMA is the only Alaska-based crab organization among the 3 associations that are generally recognized to represent crab harvesters.

UFMA supports the rationalization of the BSAI crab fisheries through the application of Harvester IFQs that are developed through the Council process. We do not support legislative mandates or other strong Congressional direction with respect to the details, components or scope of regional rationalization solutions. We do not support Processor IFQs.

There has been no consensus within the BSAI crab industry on this issue. In fact, there is significant discord and objection within the BSAI crab industry with respect to the concepts of Processor IFQs, and Congressional legislation that mandates provisions of regional rationalization. This was evident at the recent September Council meetings in Anchorage, AK, when a proposal that was developed by a small group of BSAI crab harvesters in support of Processor IFQs was not endorsed by a significant representation of BSAI crab harvesters, and further, was not supported by BSAI crab processors, or by the ad hoc BSAI Crab Rationalization Committee. I have been involved in consensus building activities in several broad and varied arenas for much of my adult life, including the 22 years that I have represented UFMA. I can assure you that any attempt to indicate or portray that even a semblance of consensus seeking or compromise was attempted or present during the past several months with respect to BSAI crab rationalization is not accurate.

We note that a detailed plan that apparently formed the basis, and contained the details, of the proposed legislative initiative was only made available to a select group within the industry on September 1. Most of the stakeholders and affected parties are still unaware of the content, details and direction of the legislative proposal to mandate Processor IFQs. Please note that 2 Kodiak processors have written letters objecting to the concept, and to the process.

In a letter to Secretary of Commerce Mineta (September 9, 2000) that was unanimously approved by the Council the day after the meeting of the ad hoc BSAI Crab Rationalization Committee, the Council clearly expresses their desire and interest to address BSAI crab rationalization at the Council level:

> " . . . to assure you that this Council is committed to . . . developing . . . rationalization measures for the crab fisheries, perhaps through an IFQ type program or fishery cooperatives . . . We believe that if the moratorium is lifted, for Bering Sea crab or any other fisheries, that development of such programs remain in the purview of the Council process. Only through the deliberative, public process embodied by the regional Council system can the interests of all stakeholders be adequately considered and addressed, including harvesters, processors, coastal communities, and others. Im-

portant management considerations at the federal and state level can also be appropriately accommodated through this process."

I. The Council as the Venue for Regional Conservation and Management Decisions

The Council should be respected as the only venue for recommending regional conservation and management solutions generally, and specifically, with respect to BSAI crab rationalization. This was the experience with respect to the development of the Halibut/Sablefish IFQ Program. A legislative mandate to the Council from Congress to incorporate BSAI crab Processor IFQs (e.g., "2-Pie" IFQs, co-ops, etc.) in a BSAI crab rationalization plan is not warranted, nor desirable. The Council process, with its attendant provisions for public input, requirements for analysis, and opportunity for Secretarial Review, is the preferable venue to address the issue of BSAI crab rationalization. The Council role in the design and development of regional conservation and management initiatives should be strengthened and supported, rather than weakened. We note that the Council has previously communicated their intention to address BSAI crab rationalization in 2 prior letters to the Secretary (9/9/00 and 4/25/00).

A significant element of the BSAI crab fleet is unaware of the initiative for Congressional action that mandates the inclusion of Processor IFQs in a BSAI crab rationalization program. Many more are unaware of the significant policy provisions and other details that are part of the proposed legislation. The legislative process generally, and especially during the last weeks of this Congress, does not provide the affected parties and stakeholders with the same level of access, or the opportunity for comment and input, as does the Council process.

We are concerned that the major policy and economic implications, and operational details of BSAI crab rationalization may not be available for public assessment and analysis; that is, the same thoughtful and deliberative review that is otherwise attempted and available with respect to the processes that govern customary legislative action (e.g., bicameral review, committee review, MSA hearings, debate, submission of comment and testimony, markup, reports, etc.), or other purely Council-led initiatives (e.g., Council Halibut/Sablefish IFQ program, etc.).

We are informed that some proponents of the subject Congressional mandate advocate a directive to the Secretary of Commerce (Secretary), absent Council action, to impose a BSAI crab rationalization plan that includes Processor IFQs by September 1, 2001. We have general trepidation to Washington D.C. lobbyists managing the details and solutions with respect to complex regional management plans. We are equally disquieted by the specter of federal bureaucrats, with the ready access and assistance of the same Washington, D.C., lobbyists, designing and imposing a Secretarial IFQ Plan for the BSAI crab fishery, and that, further, incorporates the precedent of Processor IFQs.

Rationalization of the BSAI crab fishery will be very complex. It appears that the majority of BSAI crab harvesters do not want an AFA-style structure for BSAI crab rationalization. BSAI crab harvesters do not want to be tied to a processor. BSAI crab harvesters do not want a closed class of processors. The BSAI crab industry has different complexities than the BSAI pollock fishery. The BSAI crab fishery includes several more processing entities than did AFA, approximately 370 harvesters, multiple management areas, and several crab species, each of which has experienced significantly different fluctuations in abundance, and each of which face significantly different expectations for future productivity. This is in stark contrast to the single species, single area, stable resource, limited number of vessels, and few processors that were addressed in the American Fisheries Act. If Congress intends to mandate specific details of rationalization in the BSAI crab fisheries, including the precedential inclusion of Processor IFQs, then we respectfully request that Congress also strictly and completely address the details of regulating Processor IFQs.

II. BSAI Crab Vessel Buyback

We support an appropriation of federal funds for a BSAI crab vessel Buyback program. Overcapitalization in the BSAI crab fleet is well documented and recognized, and has been the subject of several prior actions by the Council and the Secretary. A BSAI crab vessel Buyback program should be structured to permanently remove fishing history. It should permanently remove vessels from the BSAI crab fishery, and from all other BSAI and GOA fisheries, including halibut fishing, salmon and herring tendering, etc. There is significant concern among vessel owners who are not involved in the BSAI crab fisheries that any vessels that may be removed from the BSAI crab fisheries through a Buyback program will enter other fisheries in the BSAI and GOA, and create new capitalization problems, therefore, impacting what-

ever economic equilibrium may exist in such GOA and BSAI fisheries, and in other vessel related endeavors (i.e., salmon and herring tendering, etc.).

The decision of whether and how to provide federal appropriations for a BSAI crab vessel Buyback program should be based on the merits of those issues that directly address the issue of overcapitalization of the BSAI crab fleet, the associated conservation, management safety and economic concerns thereof, whether federal funds are appropriate for the purpose of addressing this overcapitalization, and the issues of how BSAI crab Buyback will impact overcapitalization in other GOA and BSAI fisheries and vessel related endeavors.

III. BSAI Crab Vessel Buyback as Associated with BSAI Crab Processor IFQs

An appropriation of federal funds for a BSAI crab vessel Buyback program should be based on its own merits, on a fair and reasonable evaluation of the rationale and expectations for the costs and benefits that result from such legislation, and should not be tied to other Congressionally mandated actions that address initiatives for regional conservation and management plans (i.e., Congressional mandate for Processor IFQs). Legislation that addresses fleet overcapitalization should not be tied to whether the BSAI crab fleet, or a portion thereof, agrees to other unassociated legislation that intends to mandate BSAI crab Processor IFQs. These are two very separate and unassociated initiatives, and the decision to do the right thing and appropriate federal funds to address vessel overcapitalization in the BSAI crab fleet should be based on a rational and focused consideration of such overcapitalization, the history, literature and demonstrated existence of such overcapitalization, the impacts of such overcapitalization on the conservation and management of the resource, and on the safety, economic and business concerns of the BSAI crab fleet (i.e., approximately 370 small businesses).

We do not support tying, binding or otherwise connecting BSAI crab Buyback legislation to any other legislation that mandates the Council to develop Processor IFQs.

IV. Kodiak Processors are Disenfranchised by Processor IFQs for BSAI Crab

Kodiak processors have a past and future stake and investment in processing BSAI crab, and, therefore, in any initiative that addresses Processor IFQs. Kodiak processors have historically provided important competitive markets to harvesters for the sale of BSAI crab. The opportunity to purchase and process BSAI crab provides important commercial activity for the Kodiak processor sector, the Kodiak community in general, processing workers, Borough and City governments (i.e., fish tax revenues, sales tax revenues from increased commercial activity, etc.), support industries, etc.

The proposed legislation that intends to mandate Processor IFQs should not disenfranchise Kodiak processors from offering competitive markets to harvesters. Harvesters need the market option that is represented by the Kodiak processing sector, especially when the Guideline Harvest Level (GHL) for several species of BSAI crab begin to recover. Kodiak processors should have equal opportunity for access as BSAI resident processors to purchase and process BSAI crab. Kodiak processors should not be limited in their ability to purchase BSAI crab. As previously noted, at least 2 Kodiak processors have filed objection to the initiative to legislatively mandate Processor IFQs.

Kodiak processors have been, and will continue to be, impacted by the consequences of the American Fisheries Act (AFA). BSAI crab Processor IFQs will provide additional benefits and enrichment to that component of the AFA processor sector that also process BSAI crab, and will further diminish the options and economic stability of the Kodiak processor sector.

Kodiak processors have had a variable history of purchasing BSAI crab, and their ability to purchase BSAI crab has been impacted by the length of season, the amount of the Guideline Harvest Level (GHL), the regulations that govern the time period for the removal of gear from the grounds after the closure of a crab season, weather in the BSAI, weather in the Gulf of Alaska (GOA), ex-vessel prices in the BSAI and Kodiak, whether the season is open long enough to permit harvesters to deliver to Kodiak and return to the BSAI fishing grounds prior to the season closure, etc. In recent years, low BSAI crab GHLs have significantly reduced the ability of BSAI crab harvesters to deliver crab to Kodiak.

The eligibility requirements and allocation formulas that have been suggested as the basis for the proposed legislation that intends to mandate Processor IFQs disenfranchises Kodiak processors, and significantly limits the ability of harvesters to

sell crab to Kodiak processors, and of Kodiak processors to purchase and process BSAI crab.

V. A Viable Processor Sector Is Important and Essential to the Preservation of Competition

UFMA clearly understands the significance and importance of the processing sector to the harvester sector, to the communities in which processors are located, to the states of Alaska, Washington and Oregon, and to the nation. UFMA respects, understands and supports the processor sector desire for economic stability.

Our respect, awareness and understanding of the economic needs of the processor sector extend to include our concern for the special economic needs and competitive position of the small-to-medium size BSAI processors. Our concern also extends to the economic needs and competitive position of those processors who were not beneficiaries of the capitalization, economic benefits, and protection from competition that was bestowed upon several BSAI crab processors through provisions of the AFA. If Processor IFQs are mandated in legislation, or otherwise adopted, then the provisions that govern allocation, ownership, transferability, etc. of such Processor IFQs should provide differentially preferential benefits to the non-AFA processor sector (including Kodiak processors) to equilibrate the relative competitive positions, and access to the BSAI crab resource, of non-AFA processors as compared to AFA processors.

Processor IFQs forebode significant impacts, and require careful scrutiny and analysis; the rationale for such should be carefully reviewed, documented and analyzed. If Processor IFQs are legislatively mandated without thorough and thoughtful consideration of the policy implications, or of the controls, restraints, constraints, safeguards, and other elements and details of a complete package that governs, regulates and constrains the impacts of Processor IFQs, we fear that the viability and overall competitiveness of the entire processor sector and industry may suffer.

The denial of Processor IFQs is essential to the continuation of a competitive and viable processor sector, and industry.

VI. Harvester IFQs are Needed, Warranted and Justified in the BSAI Crab Fishery

Legislation that clarifies the ability of the Council to continue to move forward with BSAI crab rationalization in the harvester sector, and that provides funds to develop the required analyses of such, is needed, warranted, justified and desirable. We ask that clarification be provided to support our understanding that the Council, absent an exemption from a Congressional Moratorium on the implementation of IFQ programs, is still permitted to proceed with the thoughtful and deliberative development of a BSAI crab rationalization program.

The need for further rationalization of the BSAI crab harvester sector is clear, and has been frequently demonstrated in the literature, and through the presence of those many factors that are customarily used as the rationale for Harvester IFQs. Several prior actions, and pending actions, by the Council, the National Marine Fisheries Service (NMFS) and the Secretary have recognized the need for, and have addressed, BSAI crab rationalization in the harvester sector (i.e., BSAI crab LLP, BSAI crab LLP recency requirements, vessel moratorium, etc.). Rationalization in the BSAI crab harvester sector addresses demonstrated and documented needs with respect to 1) overcapitalization; 2) conservation, management and resource concerns and benefits; 3) the ability to address conservation, management and resource concerns and benefits by addressing harvester overcapitalization; 4) vessel and human safety; 5) economic stability for approximately 370 small businesses (not the less than 15 businesses that make up the processor sector); etc.

VII. Processor IFQs Are Not Justified, Supported or Warranted

Processor IFQs are unwise, unnecessary, and the need for such has not been demonstrated. There is no literature that indicates overcapitalization in the BSAI processor sector, generally, or in the BSAI crab processor sector, specifically. There is no reasonable precedent for Processor IFQs, especially when consideration is given to the overall factors that exist in the BSAI crab industry, including overall structure, general ownership structure, foreign ownership structure, small number of processor entities, large number of harvester entities, government sponsored capitalization and protection from competition that results from AFA, etc.

The Council or the Secretary have not recognized, identified or considered the concept of overcapitalization in the BSAI crab processor sector as an important issue. The Council or the Secretary have not taken prior action to address overcapitalization in the processor sector as they have with respect to the BSAI crab harvester sector. The processor sector has not previously demonstrated, or made the case for, overcapitalization in the processor sector.

It is important to note that many BSAI crab processors will receive significant ownership of Harvester IFQs as a result of their ownership interest in vessels that will qualify for Harvester IFQs.

Most participants in the BSAI crab processor sector also participate in the processing of most of the other BSAI fishery species (e.g., pollock, pacific cod, flatfish, atka mackerel, rockfish, salmon, herring, crab, etc.); therefore, it appears impossible that a determination of overcapacity can be made in the processor sector overall, or in the BSAI crab processor sector, specifically. Add to this complexity the fact that several participants of the BSAI processor sector also own and operate processing plants that process the array of fishery species in the GOA. Standards for making the determination of overcapacity in the processor sector should be carefully developed and agreed upon, and based on a public process, and the application of valid economic principles and theory before an arbitrary determination of overcapitalization is made. If a finding of overcapitalization in the BSAI crab processor sector can be successfully argued, a discussion must then follow with respect to the alternatives that are available to remedy the circumstances that supported such a finding. Processor IFQs should not be the only predetermined solution to address whatever circumstances exist to cause such a finding.

The elements that are generally required to justify the application of IFQs to the harvester sector are not present with respect to the BSAI crab processor sector; that is, 1) overcapitalization; 2) conservation, management and resource concerns and benefits; 3) the ability to address conservation, management and resource concerns and benefits by addressing harvester overcapitalization; 4) vessel and human safety; 5) economic stability for approximately 370 small businesses (not the less than 15 businesses that make up the processor sector); etc.

The concept that is labeled as Processor IFQs (i.e., 2 Pie IFQ system) is really not an issue of rationalization or traditional IFQs. Rather, it is a concept that predominantly advances the economic allocation of a public resource to a small number of entities, many of whom are foreign owned, dominant, multidimensional, multinational, or otherwise economically enhanced by AFA. Processor IFQs represent economic protection rather than rationalization. Processor IFQs are very different than Harvester IFQs. Processor IFQs are not rationalization.

VIII. North Pacific Halibut/Sablefish IFQ Program as a Model for BSAI Crab Rationalization

BSAI crab should be rationalized in much the same manner as the halibut and sablefish fisheries have been, that is, through the allocation of Halibut and Sablefish Harvester IFQs. The Halibut/Sablefish IFQ program was the result of several years of public input, hearings, development, modification, analysis and review. While UFMA was very concerned about the economic and social impacts that were intended and expected to result from the Halibut/Sablefish IFQ program (and identified in the Environmental Impact Statements, and other analysis documents), we believe that the program has generally worked well for the industry, the consumer and the nation. Conservation and management of the halibut and sablefish resources, vessel and individual safety, product quality, economic stability for several thousand small businesses, consumer satisfaction and acceptance, product distribution, economic efficiencies, price mechanisms, economic return, etc., have all been significantly advanced as a result of the Halibut/Sablefish IFQ program. The Council and the Secretary took great care to address issues of ownership caps, leasing, transferability, product quality, foreign ownership, excessive control, etc. when they developed the Halibut/Sablefish IFQ program. UFMA believes that there are many successes and lessons with respect to the overall structure of the Halibut/Sablefish IFQ program that the Council could use as a template for BSAI crab harvester IFQs.

Unfortunately, several halibut processors who were traditionally prominent with respect to the purchase, processing, distribution and sale of halibut have lost position in one or more of these areas since the implementation of the Halibut/Sablefish IFQ program. There is approximately as much halibut being harvested and processed now as there was prior to the implementation of the Halibut/Sablefish IFQ program. The current processor sector participants in the halibut industry have somehow adjusted to the market, price structure, economics, buyer and consumer preferences, efficiencies, cost structure, distribution mechanisms, etc. that are ever changing in the halibut fishery. Fortunately, many of the processors who have lost position in the halibut industry still have the opportunity to adapt, adjust, improvise and compete.

IX. Anti Competitive Implications of Processor IFQs

Processor IFQs are a non-traditional ownership mechanism with significant anti-competitive implications that should warrant careful scrutiny and analysis. The limited field of BSAI crab processors append the need for analysis and understanding. Careful consideration and study must be given to issues such as excessive control, combinations and concentrations, market dominance, free and open market mechanisms, consumer price mechanisms, ex-vessel and revenue-sharing price mechanisms, mergers, acquisitions, etc. The processing sector exerts almost complete control over the means of production and distribution, including product form, research and development of products and markets, marketing, sales, wholesale and distribution decisions, end user and targeted-consumer decisions, etc. The harvester sector exerts control over finding, harvesting, delivering and selling BSAI crab at an ex-vessel price to a field of few buyers. Processor IFQs provide additional market power and capitalization on top of that which is afforded to those processors who are beneficiaries of the American Fisheries Act.

X. Legislation

If Congress considers legislation that mandates the Council to include specific provisions for BSAI Crab Rationalization, including Processor IFQs, we suggest that the following be included in such legislation:

Sec. 1. Definitions.

As used in this Act—

(1) "ADF&G" means the Alaska Department of Fish and Game,

(2) "BSAI" means the Bering Sea and Aleutian Islands as identified in the Fishery Management Plan for BSAI crab,

(3) "FMP" means Fishery Management Plan for BSAI crab

(4) "FTC" means the Federal Trade Commission

(5) "GHL" means the annual Guideline Harvest Level as defined by ADF&G for a specific species and management area in the BSAI crab fisheries,

(6) "Harvester IFQs" means

(7) "Harvester IFQ Pool" means

(8) "IFQ Processor" means a processor who receives an initial allocation of Processor IFQs, or who in any way, at any time, acquires Processor IFQs,

(9) "Non-IFQ Processor" means a processor who is not eligible to receive, or who does not otherwise receive, an initial allocation of Processor IFQs,

(10) "Open Processor Pool" means the amount of BSAI crab that is allocated from the GHL for a specific BSAI crab species and management area for use by all Processors,

(11) "Processor" means

(12) "Processor IFQ Pool" means the amount of BSAI crab that is allocated from the GHL for a specific BSAI crab species and management area for allocation to IFQ Processors,

(13) "Processor IFQ Implementation Date" means the first date on which any Processor IFQ Program that may be recommended by the Council, and approved by the Secretary, is operational.

Sec. 2. Procedures For Review and Consideration of Processor IFQs.

(1) The Secretary shall not consider an FMP Amendment or Regulations for Processor IFQs unless:

(A) The Council votes to recommend an FMP Amendment for Processor IFQs to the Secretary, and

(B) All requirements as set forth in (2) of this Section are met, and

(C) The FMP Amendment and Regulations are subject to all customary requirements for regulation and analysis that govern the FMP Amendment Process, NEPA, Secretarial Review, and Federal Rulemaking.

(2) The Council shall not recommend Processor IFQs to the Secretary as an FMP Amendment unless:

(A) The Council has fully developed several options and alternatives that are customarily required prior to a Council vote to recommend an FMP Amendment to the Secretary, and

(B) Such options and alternatives are subject to the analyses that are customarily required by the Council, NMFS and the Secretary for FMP Amendments and regulatory action, and that govern the FMP Amendment process, NEPA, Secretarial Review, and Federal Rulemaking, and

(C) The Council approves such recommendation of Processor IFQs by no less than a 3/4 vote of the Council in favor of the Processor IFQ FMP Amendment package, and

(D) The FTC provides the Congress, the Secretary and the Council with:

(i) a full scale review of the options, alternatives and analyses that are required in (2)(A) and (B) of this Section with special attention given to the operation, effects and impacts of BSAI Crab Processor IFQs on free and open competition and markets, price mechanisms, costs, distribution of rents, and other competitive mechanisms, and

(ii) a finding that the Processor IFQs FMP Amendment Package will have no deleterious impacts on free markets and vigorous competition in the BSAI crab industry, and

(iii) a comprehensive written report that documents the review and finding that are required in (2)(D)(i) and (ii) of this section, and

(iv) a full scale review, analysis and comprehensive written report that examines the quantification, economic and social impacts, and the impacts on free and open competition and markets of:

(I) Processor ownership interest in BSAI crab harvesting vessels, and

(II) Processor ownership interest in BSAI crab fishing history, and

(III) The percentage of Harvester IFQs that will be allocated to the processor sector as a result of processor sector ownership interest in BSAI crab vessels and BSAI crab fishing history, and

(IV) The general impacts of Processor IFQs on the BSAI crab harvester sector, and

(v) a finding that the processor sector ownership interest in BSAI crab harvesting vessels, BSAI crab fishing history, and the percentage of Harvester IFQs that may be allocated to the processor sector as a result of processor sector ownership interest in BSAI crab vessels and BSAI crab fishing history will have no deleterious impacts on free markets and vigorous competition in the BSAI crab industry, and

(vi) recommendations that preserve competition and free markets in the BSAI crab processor sector and in the BSAI crab harvester sector.

Sec. 3. Operation of Processor IFQs.

Any Processor IFQ program that the Council may recommend to the Secretary as part of a BSAI Crab Rationalization Program, and that the Secretary may approve,

(1) Shall not include an allocation of more than 30 percent of the GHL to the Processor IFQ Pool for any BSAI crab species or management area in any year, and

(A) any IFQ Processor may purchase and process crab from the amount that is allocated to the Processor IFQ Pool, and

(B) A Harvester may sell BSAI crab to any IFQ Processor that is duly authorized to purchase BSAI crab until such time that the Processor IFQ Pool is depleted,

(2) Shall include an allocation of no less than 70 percent of the GHL to the Open Processor Pool for any BSAI crab species or management area in any year, and

(A) any Processor that meets the requirements of the State of Alaska that are customarily required to purchase and process BSAI crab may purchase and process crab from the amount that is allocated to the Open Processor Pool, and

(B) A Harvester may sell BSAI crab to any Processor that is duly authorized to purchase BSAI crab from the Open Processor Pool.

(3) An IFQ Processor may not own, hold, acquire, attempt or intend to acquire, or in any way control, receive by sale, allocation, or other transfer device Processor IFQs in excess of 15 percent of the aggregate Processor IFQ Pool for any species and management area, except that,

(A) An IFQ Processor may receive an initial allocation of Processor IFQs in excess of 15 percent of the aggregate Processor IFQ Pool for any species and management area if such IFQ Processor earned such percentage as a result of the

formula that is used as the basis for the calculation and distribution of Processor IFQs to all other IFQ Processors, and

(B) An IFQ Processor that changes its ownership structure must divest itself of all Processor IFQs that it owns or otherwise controls in excess of 15 percent of the aggregate Processor IFQ Pool for any species and management area. (Note: Provisions in the Halibut/Sablefish IFQ Program that regulate individual, area and vessel caps, and the manner in which changes in the ownership of an entity impact the ability of such entity to own in excess of these caps, should be included in the provisions that govern those caps that are applied to the Processor IFQ Program)

(4) A merger, acquisition or other combination that includes 2 or more IFQ Processors must be approved by the Federal Trade Commission, and reviewed by them for the potential impacts to competition that such merger or acquisition may pose.

Sec. 4. Processor Eligibility to Own Processor and Harvester IFQs.

(1) A Processor may not receive an initial allocation of Processor IFQs, and may not, in any way, or at any time, acquire, negotiate or otherwise engage in any activity that intends to acquire Processor IFQs, if such Processor receives, holds, owns or otherwise controls, or receives by sale or other transfer device, Harvester IFQs, except that,

(A) A Processor shall be eligible to receive by initial allocation such Harvester IFQs that such Processor may have earned as of December 31, 1999, through ownership in a vessel,

(B) Harvester IFQ's that are earned by a harvesting vessel that has been purchased by a Processor after December 31, 1999, shall be allocated to the owner-of-record of the harvesting vessel during the time period that such Harvester IFQs were earned, unless the disposition of such Harvester IFQs are otherwise provided for in a sales agreement that governs the sale of the subject vessel, except that,

(i) Any sales agreement that governs the sale of a vessel to an IFQ Processor after December 31, 1999, and which grants the fishing rights to such IFQ Processor, is herewith declared null and void by this Section, and

(ii) such Harvester IFQs that are the subject of such sales agreement shall be deposited into the Harvester IFQ Pool,

(2) A Processor that holds an ownership interest in a vessel that is used in the harvest of crab may not own, hold, acquire, attempt or intend to acquire, or in any way control, receive by allocation, sale or other transfer device Processor IFQs or Harvester IFQs unless such Processor first divests itself of all ownership interest and control of any such vessel,

(3) A Processor that has more than ?? percent of foreign ownership interest may not own, hold, acquire, attempt or intend to acquire, or in any way control, receive by sale, allocation, or other transfer device Processor IFQs. (Note: Provisions that restrict foreign ownership of Halibut/Sablefish IFQs should be included in the provisions that govern the ownership of BSAI Crab Processor IFQs).

(4) A Processor that has more than ?? percent of foreign ownership interest may not own, hold, acquire, attempt or intend to acquire, or in any way control, receive by sale, allocation or other transfer device Harvester IFQs. (Note: Provisions that restrict foreign ownership of Halibut/Sablefish IFQs should be included in the provisions that govern the ownership of BSAI Crab Processor IFQs).

Sec. 5. Transfer, Sale and Lease of Processor IFQs.

Processor IFQs are transferable by sale, trade, barter or other means of transfer device, except that the leasing of Processor IFQs in an amount that exceeds 10 percent of any species or area that are owned or otherwise controlled by a Processor is not permitted.

Sec. 6. Sunset of Processor IFQ Program.

Any Processor IFQ program that may be recommended by the Council, and approved by the Secretary, shall operate for no more than 2 full years of operation, and shall sunset on the second anniversary date following the Processor IFQ Implementation Date.

Sec. 7. Federal Trade Commission Report on Processor IFQs.

Not later than 6 months after the date on which the Processor IFQ program sunsets, the Federal Trade Commission, in consultation with the Secretary and the Council, shall submit to the Congress, the Secretary and the Council a full scale re-

view, analysis and comprehensive written report that examines the operation, the economic and social impacts, and the impacts on free and open competition and markets that result from the 2 year period of the BSAI Crab Processor IFQs program. The report shall include:

(1) an analysis of the operation, effects and impacts of BSAI Crab Processor IFQs on free and open competition and markets, price mechanisms, costs, distribution of rents, and other competitive mechanisms:

(A) in the BSAI crab industry,

(B) in the non-AFA processor sector,

(C) in the Kodiak processor sector,

(D) in the BSAI and GOA fishing industry,

(E) in the BSAI crab processor sector with respect to:

(i) foreign ownership,

(ii) transferability,

(iii) caps on ownership,

(iv) leasing provisions,

(v) mergers, acquisitions, combinations and concentrations,

(F) in the BSAI harvester sector with respect to:

(i) Processor ownership interest in BSAI crab harvesting vessels, and

(ii) Processor ownership interest in BSAI crab fishing history, and

(iii) The percentage of harvester IFQs that are owned by the processor sector,

(iv) The general impacts of Processor IFQs on the BSAI crab harvester sector.

(2) a finding that the processor sector ownership interest in BSAI crab harvesting vessels, BSAI crab fishing history, and the percentage of Harvester IFQs that may be allocated to the processor sector as a result of processor sector ownership interest in BSAI crab vessels and BSAI crab fishing history will have no deleterious impacts on free markets and vigorous competition in the BSAI crab industry, and

(3) recommendations that preserve competition and free markets in the BSAI crab processor sector and in the BSAI crab harvester sector.

XI. Summary and Conclusions

BSAI crab should be rationalized in much the same manner as the halibut and sablefish fisheries have been. Harvester IFQs are needed, justified, are a reasonable solution to the circumstances that exist in the BSAI crab fishery, are consistent with prior Council action, and have shown to be beneficial in other fisheries.

If such a significant departure from traditional IFQ allocation models (i.e., Processor IFQs) is to be contemplated by Congress, it should not be part of a legislative mandate that is hastily hewn in these last days of this Congress. We are hopeful that Congress will not mandate the development and implementation of such a precedent setting and significant policy initiative, with such far reaching social, economic and resource consequences.

Valid rationale does not exist for Processor IFQs in the BSAI crab fishery. The impacts of Processor IFQs do not only effect the harvester sector, but they also impact the consumer, markets, communities that depend on the resource, competition, and the less dominant participants in the processor sector, including Kodiak processors, and those processors who did not receive the largess and capitalization that was granted in the AFA. Free and open markets and vigorous competition, and the enduring principles that underlie our antitrust laws should be every bit as relevant today as when the Sherman Antitrust Act was passed 100 years ago.

Experience has proven that the unintended consequences of these kinds of initiatives are generally significantly greater and more complex than those consequences that are intended. We respectfully request that Congress eschew the pressure to legislate even the minor details of such complex programs that carry such significant consequences.

Sincerely,

PREPARED STATEMENT OF CAPTAIN WILLIAM H. AMARU, SOUTH ORLEANS, MASSACHUSETTS

Madam Chairman, Committee Members, thank you indeed for the privilege and opportunity to share with you some of my ideas, experiences and concerns for the future sustainable management of our Nation's fisheries resources. When I last sat before a Committee of Congress in 1995, the state of our fisheries resources was in a dire condition. It is with considerable pride that today I can say we have come a long, long way towards rebuilding many fish stocks, and that in a relatively short time. The reauthorization of the Magnuson-Stevens Act in 1996 set progressive new standards and conditions. Hard work by the Nation's Fishery Management Councils, the fishing industries and the National Marine Fisheries Service have proven we can successfully rebuild fish populations. The question we must now seek to answer is how best to manage them for the 21st century and beyond.

Madam Chairman, believing there must be great depth and detail provided already by individual fishing quota interested parties, I would prefer to take up as little time as possible by describing for you the practical ways I believe individual fishing quotas may be helpful. As a member of the New England Fishery Management Council for six years, I have been a witness and a party to dramatic changes in both the way we manage and fish in New England. I have been a commercial fisherman for thirty years. In that time I have observed people as well as sea and tide, wind and weather. I believe I understand at least a little of both and frankly, the ocean, while unpredictable in the extreme and hiding its many secrets from our eyes, is often easier to understand than my fellow fishermen. Yet certain characteristics do seem nearly constant with us, independence to the extreme being first among them. We are hard working, hard headed, intelligent, proud and determined to survive whatever sea, weather or man can hand us. Most of us do and may God be with my brothers and comfort their families, who have found a watery grave before their time.

But for all of our fortitude and independence, we as a group can also be difficult and self destructive. Our determination to succeed, our need to out-fish the competition and remain competitive has in the last half of the previous century driven many of our most important fisheries to the edge. I stand here not to provide evidence of this or to lay the blame at the feet of any group or groups. Rather, I wish to offer solutions, however small they may be, to the vexing problems that may still be our undoing as we seek more and better ways to harvest the seas' vast fish resources.

It is fit then to state here that the individual transferable quota (ITQ) and the individual fishing quota, without transferability (IFQ) need to be brought to the full light of day, out of the closet of ignorance and fear. It will be through a greater understand of the issues and examples of their uses that we will get beyond the recrimination and "us" versus "them" condition that has characterized the argument between differing sides on this issue. Our failure (the Fisheries Councils) to be able to use individual fishing quotas the past several years and now for two more years into the future I believe can be linked to major discard issues in New England alone. There is no justification for this kind of waste. I ask that you give the Councils, NOAA Fisheries, and the fishing industries of our Country the opportunity to use this potentially valuable tool as a part of the management plans we need in order to protect and promote sustainable fishing for all the people.

Please remember that no fishery management plan is written without pain. Sacrifice on the part of fishers, hard decisions by managers and the thankless task of enforcement to uphold regulations continues to be the hallmark of all plans. Complexities continue to grow as National Standards further complicate rebuilding. While individual fishing quotas will not eliminate these features, it can afford managers and fishermen reduced complexity, a fixed number of users and in the case of transferability, an economic payback for not fishing.

The following are several possibilities for use of ITQ and IFQ management in fisheries plans. I offer the first of these as part of my recent experience with the Dogfish Plan which the Mid Atlantic and New England Fishery Management Councils jointly developed. The outcome of this very difficult management plan, of which I had a hand in writing, is now characterized by huge discards of dog fish, in the tens of millions of pounds, by boats from Maine to North Carolina who fish under a 600 and 300 pound possession limit. In the unregulated fishery trips of 10,000 to 25,000 lbs. were common. The plan as I have envisioned it would have been a temporary

one, perhaps five years, used as an experiment to be closely monitored and analyzed both for social and scientific success.

The directed dogfish fishery was a relatively new one with good reporting data and a well known universe of major and minor fishing interests. Information on who caught the bulk of fish, where and with what gear, are all well documented. Because dogfish are difficult to handle and of low value, the actual fleet size of directed vessels was low, at about 250. With the final trip limits (see above) in the Federal Plan set so low, the directed fishery disappeared and shore side processing shut down. The U.S. also lost a small but important export market as most dogfish products were shipped to European Markets. If the two Councils had been able to use an individual fishing quota format to distribute the quota, set at about three million pounds, the directed boats could have been identified as the ones who qualified, the possession limit for these boats could have been set at a level which could have allowed rebuilding and kept shore processors open and we would still be exporting dogfish products to Europe. Instead of having a pure discard fishery, we would have a limited directed fishery and a large enough possession limit for non-directed boats to lower by-catch discards, none of which we have now. A great opportunity to try a temporary, limited IFQ plan on a small fishery as a test case was lost and the American people as a result are not getting the best management plan or use of their resource for their tax dollars.

An additional and admittedly more complex use for an IFQ/ITQ format exists now with the fishery for cod in the Gulf of Maine (GOM). The complexity arises mainly from the greater number of participants, and age of the fishery but still an opportunity to lower ever increasing discards (due to low trip limits) has been lost as the New England Fishery Management Council struggles to deal with a growing resource and management actions which virtually guarantee that a major portion of the resource is discarded. An individual quota for those qualified could allow for the fish encountered while on the grounds to be landed, not discarded. Once a quota has been filled, the vessel would be finished with the fishery for the period. Quota periods would be selected as part of the development process of the plan. Quarterly quotas seemed appropriate to me. The description here is necessarily simple and brief. In reality, it would be time consuming and full of difficult issues, but no more so than the current situation, where we find ourselves making very little progress. The first time will be the most difficult. I expect each additional ITQ/IFQ plan to be better and less disruptive as we learn, something we are not today doing.

To conclude, six years ago, fishermen told me, as I neared the time to vote on Amendment Seven to our groundfish plan, that I was about to vote them a figurative death sentence. At that time, Amendment Seven was seen as the end to many in my industry as it would so fundamentally change the way we as fishermen go about our work. It was a tremendously wide door being open to a future few really understood. I voted what I believed would bring back the fish, and in fact, it has given us back a life we were surely losing. I view the furor over the IFQ/ITQ situation in no less the same light. Fear of the unknown by some is holding back thoughtful and professional managers and like-minded fishers from moving forward to ensure we have the correct mix of management strategies for the future.

No one concept or management philosophy should ever become entrenched or untouchable in our democratic system. Under the Sustainable Fisheries Act, I don't believe it ever will. We need all the tools necessary and with careful thought, supported by users and industry leaders from all sectors, we will provide the best management possible for the future.

Thank you for listening to my thoughts. Among the many intelligent and well supported individuals providing you with testimony today, I hope my comments will reach a little farther down and help you make the right decisions for the all American People.

PREPARED STATEMENT OF RICHARD R. TAYLOR, SEA SCALLOP PROJECT, GLOUCESTER, MA

Remarks concerning the opening phase of discussion of Individual Fishing Quota (IFQ).

After reading the bill S.637 as submitted and the invited testimony I am prompted to write concerning several of the topics discussed. Thank you in advance for this opportunity. As introduction, I began commercial fishing on an offshore scalloper with a crew of 13 in 1968. Over the years I participated on a part time basis in many fisheries both here on the east coast and in Alaska, generally serving as engineer, and worked ashore periodically in order to spend time with family. These fisheries include groundfish, shrimp, swordfish, offshore lobster, snapper/grouper, and

scallop. In 1990 still feeling there was good opportunity despite the influx of new vessels, I purchased an older vessel to fish for scallop out of Gloucester, Massachusetts knowing that as a crewman I would have no voice or ability to effect needed changes. Am currently one of four industry members appointed to the NEFMC Research Steering Committee, and volunteer on the advisory panels for scallop, habitat, and aquaculture.

What we are up against

Belief in the soundness and fairness of fishery management goals and practices by the fishing fleets in the northeast region is the primary tool that encourages both participation and compliance during this major rebuilding phase. I am certain that everyone involved during the last five years of constantly moving goalposts would welcome a comprehensive plan that addresses specific problem areas. Several of these problem areas within the current management process are immediately evident:

1. management of different species by different methods,
2. the inequality of initial allocation of effort into Days At Sea (DAS) which has resulted in a shift in landings by port,
3. the differential effect of area closures on vessels of different size,
4. the differential effect of area closures on ports in different locations, again resulting in a landings shift,
5. the increasing reliance on regulatory discards, some of which result from the items above.

Most of these issues are beginning to be voiced and some will be partially addressed by upcoming Council action. In my opinion all of these issues are primary reasons for lack of trust in the existing system. With this as background to discussion of future management objectives, it is no wonder that there is an apparent lack of enthusiasm for a comprehensive system that includes Individual Fishing Quotas. For many of the fishing people an often voiced question is "What are we going to lose next?" This fear of change, this uncertainty, is a direct result of our constantly changing stream of management objectives and plans and makes it very difficult to plan any longer term business related decisions, particularly investment. Many times it seems as if we have gone through a major amendment to the FMP and before those objectives are met, and with clear evidence that the changes are working, yet another goal is conceived requiring yet another series of meetings and further major change.

I would like to address each of the numbered points above in short form because I feel that an IFQ management system coupled with an area management system may be crafted to address these issues.

1. Different management methods for different species. One of the best examples, or worst if you will, is with summer flounder in relation specifically to all the other flounder species. Like most of the flounders it does not span the range of the region, and so is preferentially targeted mostly by the mid-Atlantic vessels because of proximity. As you know there is a state by state quota that once filled shuts down the fishery to bycatch levels. There is a race to the fish reality, and a high volume discard thereafter. Similarly the scallop industry in an attempt to be a single species fishery went to a 300 pound trip limit for groundfish (primarily flounder) for their average 12 to 14 day trips for these past 5 years. Back of the envelope calculations for this time proved startling. DAS for the fleet were about 50,000 in 1994 with graduated reduction to approximately 25,000 for the 2000 fishing year. Although I do not have the official DAS usage on hand, these days can be adequately estimated by multiplying the number of active full time vessels by the DAS allotment for the year. Allowing for the reduction in DAS, multiplying by a low value of 100 pounds per DAS (these vessels generally have gear on bottom 20 hours per day, 100 pounds is 3 or 4 fish per hour), and subtracting out the amount landed yields an estimate of discards of over 16 million pounds. A well crafted IFQ system including transferability would help rectify this situation by allowing purchase or exchange of groundfish allocation, retention and sale.

2. Inequality of initial DAS allocation. First let me say that we have two different approaches already in place with the groundfish and scallop fleets both based on previous history. Scallop vessels were required to meet a minimum threshold of about 160 days to be issued a full time permit, meaning that all vessels were treated equally in terms of annual DAS. Groundfish vessels on the other hand had been encouraged to target other species for some years, and those that did often received fleet DAS or 88 days, while those that continued to catch

groundfish were awarded annual DAS on the basis of how hard they went after the resource, and received up to 300 days. So here there is a built in inequality in the initial effort allocation that many are concerned will translate into widely unequal shares of an IFQ based fishery.

Differential access for vessels of differing size. Additionally area and rolling closures in the nearshore Gulf of Maine have severely impacted landings for that fleet sector and add another level of concern that any shares under any type quota system will be further reduced because their landings have been reduced these last few years. Nearshore vessels often fish only for the day, make several tows and return to port. These vessels have been limited to 400 pounds of cod per day, often caught in short order, and the balance of catch for the day discarded while targeting other species with no poundage limitation. Many to most of these fish cannot survive the pressure change and are lost to the fishery. For these vessels a multispecies quota large enough to survive on would seem a natural solution.

The more offshore vessels stay out from several days to more than a week, tow round the clock, and are allowed several thousand pounds per day even if within sight of the other vessels across the arbitrary division line. Tagging studies are underway yet a common sense approach of more fair allocation seems indicated.

3. Differential effect of area closures on ports in different locations. A nearshore closure in the Western Gulf of Maine and seasonal rolling closures effectively hamstring the nearshore fishing fleets for half the year, severely impacting the fleets from Cape Cod, Boston, Gloucester, New Hampshire, and southern Maine, while New Bedford and Rhode Island vessels continue to increase their landings, thus their share of the total landings. This has a profound effect on market share and distribution patterns. Again an IFQ system that started out equal would have a greater chance of adoption and success.

Among the stated concerns is buyout of quota by large corporation from elsewhere and the effect on local communities. Alaska has had Community Development Quota for years allowing a one year sale (or lease) of a community's share to those with a suitable vessel. A variation of this established practice might be a requirement that the quota remain within a given geographic region or port.

4. Increasing reliance on regulatory discards, some of which result from the points above. As stocks rebuild and we are restrained by SFA to a low (20 percent) rate of removal, the DAS effort controls will become even more prone to the discard problem unless DAS are considerably reduced. Since all species will be rebuilding at different rates, one or the other will of necessity need increased protection. Without a combined multispecies quota limit that avoids discarding the low population species and continuing to fish for other species we will continue to increase regulatory discards.

Our experience in the scallop fishery has led us to the planning and adoption of an Area Management strategy at the Council level. Although industry representatives have asked for the ability to close areas to allow growout of small scallop as far back as the early 1980's, it is only recently where the areas closed to protect groundfish have given real insight into the potential populations possible for this resource. At this time there are more scallop in the groundfish closed areas and the mid-Atlantic scallop growout areas than have ever been on the shelf in anyone's living memory. Landings this year will approach the all time record with known reserves of spawning age scallop approximately equal to 4 times landings. No new areas have been closed since 1997. Abundance is increasing in the areas that have remained open in spite of the existing effort. The scallop plan is working, the Council staff and Plan Development Team scientists are refining requirements for a more comprehensive Area Management effort to continue this trend.

However most of the offshore vessels are required to be tied to dock for 245 days a year. An owner with two vessels has both tied up two thirds of the year, and lacks the flexibilty under the current system to have one working 240 days, both a poor use of capital and not a stable situation. Fleet vessels are aging, having for the most part been built in the 1970's and 1980's, and under the current restrictions there is little incentive to invest further.

How does this relate to discussion of a quota based fishery? First removals from these management areas are being determined by estimating the available biomass (and here we are still developing the tools to increase the accuracy of these assessments) and then setting a fleet wide Total Allowable Catch or TAC, interpreted under SFA to mean approximately 20 percent of the available biomass. Individual

vessels are then each allocated the appropriate amount of trips with a specified amount of pounds to approach the TAC. If for any reason this vessel allowance is not taken the remaining amount may return to the common pool of pounds to be redistributed to willing vessels, or in the case of the Nantucket Lightship Area, it was left to stay in that area and access was not redistributed. In the meantime there was no accurate biomass estimate nor limit on removals from the otherwise 'open' areas while landings continue at a record pace. In summary, biomass estimates are figured in pounds, removals in pounds as a fraction of biomass, and landings are weighed out and sold in pounds, but input effort controls are allocated in DAS. As a result we are constantly having to equilibrate pounds to days at all levels of planning.

I feel a well thought out Quota system for this fishery makes inherent sense. Transfer of quota (or even DAS) allows flexibility not possible under the present system. Regarding S.637 and quota transfer, I feel it is critical, first, that all permits begin with an initially equal share or allocation (the most difficult issue), secondly that transfer not be forbidden in all fisheries, and lastly that the acquisition of pounds of groundfish (flounder) allocation, would transform undesirable regulatory bycatch (waste) into a marketable product, a realistic component of catch even with advanced bycatch reduction devices.

Finally, I would estimate that half of the vessels do not at this time fish with the owner on board and have not for some years, making this proposed requirement of S.637 unworkable to many if not most.

There are many other substantive issues regarding reauthorization but will save those discussions for a later time.

Thank you for this opportunity.

OFFICE OF THE MAYOR
May 14, 2001

Hon. Olympia J. Snowe,
Chairperson,
Senate Subcommittee on Oceans and Fisheries
Washington, DC.

Dear Senator Snowe:

I write on behalf of the City of Gloucester and its fishermen regarding S. 637, the IFQ Act of 2001. Reference is also made to the letter on the same subject dated May 11, 2001 from the Massachusetts Fishermen's Partnership. Gloucester endorses the sentiments expressed by those remarks.

Thank you for your assistance in crafting an effective Bill that helps sustain our industry without adversely affecting conservation measures.

Sincerely,

BRUCE H. TOBEY
Mayor

MASSACHUSETTS FISHERMEN'S PARTNERSHIP
May 11, 2001

Hon. Olympia J. Snowe,
Chairperson,
Senate Subcommittee on Oceans and Fisheries
Washington, DC.

Dear Senator Snowe:

The Massachusetts Fishermen's Partnership (MFP) is pleased to respond to your request for testimony regarding S. 637, the IFQ Act of 2001.

Angela Sanfilippo, President of the Gloucester Fishermen's Wives Association, has previously presented testimony on behalf of the Massachusetts Fishermen's Partnership (MFP) with regards to reauthorization of the Magnuson-Stevens Act. This testimony represents the input of the MFP membership, which includes:

- Boston Harbor Lobstermen's Cooperative
- Cape Cod Commercial Hook Fishermen's Association
- Commercial Anglers' Association
- General Category Tuna Association
- Gloucester Fishermen's Wives Association

- Gloucester Fishermen's Association
- Gulf of Maine Fishermen's Alliance
- Marshfield Commercial Fishermen's Association
- Massachusetts Commercial Fishermen's Association
- Massachusetts Inshore Commercial Ground Fishermen's Association
- Massachusetts Lobstermen's Association
- New Bedford Seafood Coalition
- New England Fish Exchange
- Pigeon Cove Fishermen's Co-Op
- Plymouth Lobstermen's Association
- South Shore Lobstermen's Association

Mayor Bruce H. Tobey of the City of Gloucester has also contacted the MFP and requested that he be named in support of this testimony on behalf of the City of Gloucester.

We wish to thank you, Senator Snowe, for your tireless efforts to promote the viewpoints and interests of your commercial fishing constituents. We are especially grateful for your courage and leadership in the United States Senate on the issue of individual quotas. The MFP shares your grave concerns about ITQs/IFQs. Last year the MFP engaged in a lengthy and well-documented consultation process with fishermen of all gear sectors in Massachusetts. The consensus among Massachusetts fishermen is decidedly opposed to ITQs and IFQs in any form. Before we offer specific comments on S. 637, the MFP wishes to state for the record our reasons for opposing ITQs/IFQs and our consensus that the present ITQ/IFQ moratorium should be continued.

Massachusetts Fishermen's Partnership (MFP) Position on ITQs/IFQs

The Massachusetts Fishermen's Partnership (MFP) is fundamentally opposed to the creation of individual quota systems in New England because we believe that they inevitably put the rights of individual small fishermen in competition with corporate greed.

While we believe that there are well-intentioned efforts to create Individual Fishing Quotas (IFQs) with safeguards against transferability and consolidation they are ultimately doomed to failure for the following reasons.

Already we have seen that those who have argued most urgently for establishment of IFQs have been the first to suggest that they can't work effectively without being transferable. In addition, some have testified that "fishermen restricted by non-transferable IFQs eventually persuaded government authorities to allow transfers." We should ask if this was due to greater "trust in the IFQ program" as they claim or economic necessity!

Those who champion IFQs admit that "the initial allocation of quota is the major impediment to the adoption of IFQs in most fisheries." This is like saying that the problem of gun control is what to do with the bullets after they are fired. "The struggle to find a fair and just allocation of harvest rights is difficult, time-consuming and adversarial." This is because there is no fair way to divide up the ocean. The notion that the "pain is all up front" is ludicrous considering that those who are denied a quota have no voice in the system.

The much-praised Organization for Economic Cooperation and Development (OECD 1997) global study demonstrates that IFQ's present problems with the initial allocation of quota and with enforcement and compliance. The report documents that IFQ's have failed to eliminate the race-to-fish in some fisheries in the Netherlands and Norway and in Iceland have led to increases in investment.

One can only wonder why the proponents of IFQs do not mention the Food and Agricultural Organization (FAO) Fisheries Technical Paper 404/1 and 404/2 entitled "Uses of property rights in fisheries management." This 2000 report based on the proceedings of the Fishrights 99 conference in Freemantle, Australia corrects many of the misconceptions of the OECD report and updates the arguments with many practical examples.

It is also interesting to note that some testimony referred specifically to the crisis in the the New England fishery citing overfishing and overexploitation of cod. These IFQ advocates are apparently unaware that cod are no longer considered overfished in the Gulf of Maine and Georges Bank.

Proponents of IFQs state that "an open and transparent process is needed to insure institutional legitimacy, credibility and trust", but that "we in the US have not yet designed a process that satisfies these criteria." The establishment of IFQs will

do many things to the fishing communities, but it will not promote trust in management systems.

Another misconception is that IFQs promote conservation, but there is little evidence to support this claim. The prohibition on transfers is said to "instill an incentive to cheat." However it is clear that cheating, highgrading and discards are a direct consequence of the quota system.

Finally, it must be said that as soon as quota systems are developed, everyone will want a quota. Environmentalists have already demanded a quota which is not fished and processors (who also own floating catcher/processing vessels) have demanded their share. There will never be enough quota to satisfy all parties. A quick look at the Gulf of Maine indicates that an initial cod TAC of 2000 mt (slightly more than the current TAC) split by 1000 shareholders would yield a quota averaging less than 5000 lbs per participant per year. No one could stay in business with this level of catch.

For New England, IFQs are a solution in search of a problem. The problem of overfishing is rapidly being controlled under existing harsh management measures. Changing the management system now will only exacerbate the problems. As we move gradually towards ecosystem management it would be tragic to embark on such a costly and unnecessary detour. The only system which can work in this area is one which provides the most fish for the most fishermen while meeting the long term conservation objectives. The IFQ system can never claim to meet this objective.

Comments on S. 637

Having made our position clear for the record, we would like to comment specifically on provisions of S. 637. If such legislation were to be adopted, we feel strongly that many provisions of the proposed statute need to be made more specific in order to avoid confusion and implementation that does not conform to the intent of lawmakers. Many of our comments are therefore questions. We hope very much to work with you and your staff to develop consensus around answers to these questions.

We have inserted our questions and comments as annotations in the text of the bill. We have also kept the line numbers for the bill to the right hand side. We hope that these can all be included as such in the record so that the context of our questions and comments can be clear to all concerned parties.

[We reproduce the text of S. 637 and place our bolded/italicized questions and comments in brackets]:

107TH CONGRESS
1ST SESSION
S. 637

To amend the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C.1801 et seq.)to authorize the establishment of individual fishery quota systems.

IN THE SENATE OF THE UNITED STATES
MARCH 28,2001

Ms.SNOWE (for herself and Mr.MCCAIN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C.1801 et seq.)to authorize the establishment of individual fishery quota systems.

*Be it enacted by the Senate and House of Representa-*1
*tives of the United States of America in Congress assembled,*2
SECTION 1. SHORT TITLE. 3
This Act may be cited as the "IFQ Act of 2001 ".4
SEC. 2. INDIVIDUAL QUOTA PROGRAMS. 5
(a)AUTHORITY TO ESTABLISH INDIVIDUAL QUOTA 6
SYSTEMS.—Section 303 of the Magnuson-Stevens Fishery 7
Conservation and Management Act (16 U.S.C.1853)is 8
amended by adding at the end the following:9

S. 637 IS
S. 637 Page 2

"(e)SPECIAL PROVISIONS FOR INDIVIDUAL QUOTA 1
SYSTEMS.—2
"(1)CONDITIONS.—A fishery management plan 3
which establishes an individual quota system for a 4
fishery after September 30,2002—5

[These provisions should be active in 2001 just in case a Council tries to establish an IFQ in the time gap before final approval.]

"(A)shall provide for administration of the 6
system by the Secretary in accordance with the 7
terms of the plan;8
"(B)shall not create, or be construed to 9
create, any right, title,or interest in or to any 10
fish before the fish is harvested;11
"(C)shall include provisions which estab-12
lish procedures and requirements for each 13
Council having authority over the fishery, for—14
"(i)reviewing and revising the terms 15
of the plan that establish the system; and 16

[There should be some limits set for revising the terms such as; within the constraints of the Magnuson-Stevens Act or; consistent with conservation objectives.]

"(ii)renewing, reallocating, and re-17
issuing individual quotas if determined ap-18
propriate by each Council;19

[Not more frequently than once per year.]

"(D) shall include provisions to—20
"(i) promote sustainable management 21
of the fishery;22
"(ii) provide for fair and equitable al-23
location of individual quotas under the sys-24
tem;25

[We need a specific standard for determining what is fair and equitable. We also need an independent oversight panel to judge the effectiveness of this provision.]

S. 637 IS
S. 637 Page 3

"(iii) minimize negative social and 1
economic impacts of the system on local 2
coastal communities;3

[What happens if it is determined that transferability is ultimately necessary to minimize social and economic impacts?]

"(iv)ensure adequate enforcement of 4
the system,including the use of observers 5
where appropriate at a level of coverage 6
that should yield statistically significant re-7
sults;and 8

[This could easily result in 10–20 percent observer coverage for all vessels. Where will the funding come from for such an expensive program?]

"(v)take into account present partici-9
pation and historical fishing practices,in 10
the fishery; and 11

[It is imperative that historical fishing practices be taken into account in a way that does not discriminate against vessels who were unable to fish [for various reasons during a reasonable time period.]

"(E) include provisions that prevent any 12
person or entity from acquiring an excessive 13
share of individual quotas issued for a fishery.14

[This provision is meaningless unless an excessive share is clearly defined. We would recommend 1 percent or less to prevent creeping consolidation.]

"(2) PLAN CHARACTERISTICS.—An individual 15
quota issued under an individual quota system es-16
tablished by a fishery management plan—17
"(A) shall be considered a grant, to the 18
holder of the individual quota, of permission to 19
engage in activities permitted by the individual 20
quota;21
"(B) may be revoked or limited at any 22
time,in accordance with the terms of the plan 23
and regulations issued by the Secretary or the 24

Council having authority over the fishery for 25
S. 637 IS
S. 637 Page 4
which it is issued, if necessary for the conserva-1
tion and management of the fishery (including 2
as a result of a violation of this Act or any reg-3
ulation prescribed under this Act);4

[This revocation provision will almost certainly result in numerous lawsuits, which will devour all of the administrative and enforcement funds. We suggest a review board, which would examine all extenuating circumstances and allow for an appeals process.]

"(C) if revoked or limited by the Secretary 5
or a Council, shall not confer any right of com-6
pensation to the holder of the individual quota;7

[Under certain circumstances beyond the fishermen's control compensation might be appropriate.]

"(D) may be received and held in accord-8
ance with regulations prescribed by the Sec-9
retary under this Act;10

[Here again, it is imperative to establish an appeals process.]

"(E) shall, except in the case of an indi-11
vidual quota allocated under an individual 12
quota system established before the date of en-13
actment of the IFQ Act of 2001,expire not 14
later than 5 years after the date it is issued, in 15
accordance with the terms of the fishery man-16
agement plan; and 17

[Does this mean that expiration could conceivably occur after only one year (this would be not later 5 years)? For pre-existing plans, perhaps consideration should be given to an expiration date possibly ten years from enactment.]

"(F) upon expiration under subparagraph 18
(E),may be renewed, reallocated, or reissued if 19
determined appropriate by each Council having 20
authority over the fishery.21

[It will be necessary to state specifically under what conditions it would be appropriate to renew these quotas. If these quotas are to be reviewed individually, who will decide which practices have more conservation benefit?]

"(3) ELIGIBLE HOLDERS.—22
"(A) IN GENERAL.—Except as provided in 23
subparagraph (B),any fishery management 24
plan that establishes an individual quota system 25
S. 637 IS
S. 637 Page 5
For a fishery may authorize individual quotas to 1
be held by or issued under the system to fishing 2
vessel owners, fishermen, and crew members.3
"(B) NON-CITIZENS NOT ELIGIBLE.—An 4
individual who is not a citizen of the United 5
States may not hold an individual quota issued 6
under a fishery management plan.7
"(4) PERMITTED PROVISIONS.—Any fishery 8
management plan that establishes an individual 9
quota system for a fishery may include provisions 10
that—11
"(A) allocate individual quotas under the 12
system among categories of vessels; and 13

[Does this mean that different sized vessels and those with different gear will be allotted unequal quotas regardless of fishing history?]

"(B) provide a portion of the annual har-14
vest in the fishery for entry-level fishermen,15
small vessel owners, or crewmembers who do 16
not hold or qualify for individual quotas.17

[It is necessary to be specific about this portion, (possibly 5–10 percent), otherwise one IFQ could meet this requirement.]

"(5) TERMINATION OR LIMITATION.—18
"(A) GROUNDS.—An individual quota sys-19
tem established for a fishery may be limited or 20
terminated at any time if necessary for the con-21
servation and management of the fishery, by—22

[This provision for termination of quotas for management of the fishery gives absolute power to the managers. They can terminate any quota, which does not suit their management plan without explanation or recourse.]

"(i) the Council which has authority 23
over the fishery for which the system is es-24
S. 637 IS
S. 637 Page 6
tablished, through a fishery management 1
plan or amendment; or 2
"(ii) the Secretary, in the case of any 3
individual quota system established by a 4
fishery management plan developed by the 5
Secretary.6

[Both of these authorities would eventually be tempted to exercise political leverage to conform or lose their quota, regardless of the conservation benefits.]

"(B) EFFECT ON OTHER AUTHORITY.—7
This paragraph does not diminish the authority 8
of the Secretary under any other provision of 9
this Act.10
"(R) EQUIRED PROVISIONS;REALLOCA-11
TIONS.—Any individual quota system established for 12
a fishery after the date of enactment of the IFQ Act 13
of 2001—14
"(A) shall not allow individual quota 15
shares under the system to be sold,transferred,16
or leased;17

[While the MFP generally supports this restriction, we are at a loss to know what will become of a large number of fishermen who are likely to receive less than adequate quotas in a multispecies fishery. If a fisherman begins with a quota, which becomes inadequate, will he be compensated?]

"(B) shall prohibit a person from holding 18
an individual quota share under the system un-19
less the person participates in the fishery for 20
which the individual quota share is issued; and 21
[What is meant by participation? Would landing one lb of any multispecies groundfish qualify?]
"(C) shall require that if any person that 22
holds an individual quota share under the sys-23
tem does not engage in fishing under the indi-24
vidual quota share for 3 or more years in any 25
S. 637 IS
S. 637 Page 7
period of 5 consecutive years, the individual 1
quota share shall revert to the Secretary and 2
shall be reallocated under the system to quali-3
fied participants in the fishery in a fair and eq-4
uitable manner.5

[Who will ultimately determine what is a fair and equitable reallocation. Will this be decided by the courts?]

"(7) EXCEPTIONS.—6
"(A) HARDSHIP.—The Secretary may sus-7
pend the applicability of paragraph (6)for indi-8
viduals on a case-by-case basis due to death,9
disablement, undue hardship, retirement, or in 10
any case in which fishing is prohibited by the 11
Secretary or the Council.12

[This is one of the biggest problems with the bill. It is hard to imagine any situation which prevents a fishermen from making a living that does not constitute an undue hardship. As it is written, this can only be determined by a judge.]

"(B) TRANSFER TO FAMILY MEMBERS.—13
Notwithstanding paragraph (6)(A), the Sec-14
retary may permit the transfer of an individual 15
fishing quota, on a case-by-case basis, from an 16
individual to a member of that individual 's fam-17
ily under circumstances described in subpara-18
graph (A)through a simple and expeditious 19
process.20

[This is a major loophole which needs to be closed to ensure non-transferrability. In some communities, many people are related and it is necessary to define precisely what is meant by a family member.]

"(8) DEFINITIONS.—In this subsection:21
"(A) INDIVIDUAL QUOTA SYSTEM.—The 22
term 'individual quota system 'means a system 23
that limits access to a fishery in order to 24
S. 637 IS
S. 637 Page 8
achieve optimum yield, through the allocation 1
and issuance of individual quotas.2

[This country has struggled for years with the definition and applicability of optimum yield. This issue will probably never be resolved satisfactorily so it may be advisable to use other terms to describe the IFQ goals.]

"(B) INDIVIDUAL QUOTA.—The term 'indi-3
vidual quota 'means a grant of permission to 4
harvest a quantity of fish in a fishery, during 5
each fishing season for which the permission is 6
granted, equal to a stated percentage of the 7
total allowable catch for the fishery.".8
(b) APPROVAL OF FISHERY MANAGEMENT PLANS 9
ESTABLISHING INDIVIDUAL QUOTA SYSTEMS.—Section 10
304 of that Act (16 U.S.C.1854) is further amended by 11
adding after subsection (h) the following:12
"(i) EFERENDUM PROCEDURE.—13
"(1) A Council may prepare and submit a fish-14
ery management plan, plan amendment, or regula-15
tion that creates an individual fishing quota or other 16
quota-based program only if both the preparation 17
and the submission of such plan, amendment or reg-18
ulation are approved in separate referenda con-19
ducted under paragraph (2).20

[The MFP strongly supports this dual referenda plan to guarantee that the industry is ready to support an IFQ plan.]

"(2)The Secretary, at the request of a Council,21
shall conduct the referenda described in paragraph 22
(1).Each referendum shall be decided by a two-23
thirds majority of the votes cast by eligible permit 24
holders. The Secretary shall develop guidelines to de-25
S. 637 IS
S. 637 Page 9
termine procedures and eligibility requirements for 1
referenda and to conduct such referenda in a fair 2
and equitable manner.3

[It is unclear what a fair and equitable referendum would look like. Would it be open only to those eligible for quota or would all stakeholders be represented? Under such circumstances a four-fifths majority should be the minimum level of acceptance.]

"(j) ACTION ON LIMITED ACCESS SYSTEMS.—4
"(1) In addition to the other requirements of 5
this Act, the Secretary may not approve a fishery 6
management plan that establishes a limited access 7
system that provides for the allocation of individual 8
quotas (in this subsection referred to as an 'indi-9

vidual quota system ')unless the plan complies with 10
section 303(e).11
"(2) Within 1 year after receipt of rec-12
ommendations from the review panel established 13
under paragraph (3),the Secretary shall issue regu-14
lations which establish requirements for establishing 15
an individual quota system. The regulations shall be 16
developed in accordance with the recommendations.17

[For some complex multispecies fishery management plans, one year may not be enough time to establish all the requirements. It took two years just to identify EFH.]

The regulations shall—18
"(A specify factors that shall be consid-19
ered by a Council in determining whether a 20
fishery should be managed under an individual 21
quota system;22
"(B)ensure that any individual quota sys-23
tem is consistent with the requirements of sec-24
tions 303(b)and 303(e),and require the collec-25
S. 637 IS
S. 637 Page 10
tion of fees in accordance with subsection (d)(2)1
of this section;2

[It should be necessary to establish an annual IFQ Budget for the management of a fishery before fees can be collected. That way sufficient funds can be collected to provide for the first year. Also it is important that an IFQ system not be allowed to absorb all funds for fisheries whether or not they are managed by IFQs.]

"(C) provide for appropriate penalties for 3
violations of individual quotas systems,includ-4
ing the revocation of individual quotas for such 5
violations;6

[There should be no assessment of penalties until an adequate appeals process is firmly in place.]

"(D) include recommendations for poten-7
tial management options related to individual 8
quotas, including the use of leases or auctions 9
by the Federal Government in the establish-10
ment or allocation of individual quotas; and 11

[Surely there is enough previous experience in ITQ management to know whether a lease sale or an auction should be held.]

"(E) establish a central lien registry sys-12
tem for the identification, perfection, and deter-13
mination of lien priorities, and nonjudicial fore-14
closure of encumbrances, on individual quotas.15

[It would be helpful to have an example of what a non-judicial foreclosure of encumbrances on individual quotas might entail.]

"(3)(A) Not later than 6 months after the date 16
of the enactment of the IFQ Act of 2001,the Sec-17
retary shall establish a review panel to evaluate fish-18
ery management plans in effect under this Act that 19
establish a system for limiting access to a fishery,20

[6 months may not be enough time to establish these panels especially if it is determined that they will consist of only 4 representative stakeholders.]

including individual quota systems, and other limited 21
access systems, with particular attention to—22
"(i) the success of the systems in con-23
serving and managing fisheries;24
S. 637 IS
S. 637 Page 11
"(ii) the costs of implementing and enforc-1
ing the systems;2

[There should be a spending cap on enforcement as a percentage of revenue generated or this priority will absorb all program funds.]

"(iii) the economic effects of the systems 3
on local communities; and 4

[The MFP recommends the establishment of independent community-based panels to assess the economic and social impacts of fisheries management on communities.]

"(iv) the use of auctions in the establish-5
ment or allocation of individual quota shares.6

[How will these effects be studied after only 6 months when it will take far longer just to gather the necessary data?]

"(B) The review panel shall consist of—7
"(i) the Secretary or a designee of the Sec-8
retary;9
"(ii) the Commandant of the Coast Guard;10
"(iii) a representative of each Council,se-11
lected by the Council; and 12
"(iv) 5 individuals with knowledge and ex-13
perience in fisheries management.14

[This should not include anyone who owns quota or in any way profits from quota system. Under no circumstances should the Review Panel be exempted from conflict of interest laws.]

"(C) Based on the evaluation required under 15
subparagraph (A),the review panel shall,by Sep-16
tember 30,2003—17
"(i) submit comments to the Councils and 18
the Secretary with respect to the revision of in-19
dividual quota systems that were established 20
prior to June 1,1995;and 21
"(ii) submit recommendations to the Sec-22
retary for the development of the regulations 23
required under paragraph (2).".24

[Does this mean that pre-existing quota systems can be required to submit to the regulations for new IFQs?]

Thank you for the opportunity of offering our testimony for the record.

Truly yours,

ALEXANDER FERENT
President

ALASKA MARINE CONSERVATION COUNCIL
Anchorage, AK, May 1, 2001

Hon. Olympia J. Snowe,
Chairperson,
Senate Subcommittee on Oceans and Fisheries
Washington, DC.

Dear Senator Snowe:

Enclosed is information regarding the pros and cons of future limited access programs for federally managed fisheries in Alaska. We urge the Senate Subcommittee on Oceans and Fisheries to develop strong standards for future limited access programs that ensure such management plans serve conservation and communities and prevent corporate control of the resource and access to fishing opportunities.

Also enclosed is a report on the results of a recent Alaska statewide poll that shows the vast majority of people agree that more fisheries conservation is needed to strike the balance between economic benefits of fishing with long-term sustainability of the ecosystem. We believe future limited access fishery management plans must be used as tools to achieve this balance

The Alaska Marine Conservation Council is a community-based organization of fishermen, small business owners, subsistence hunters, families and others whose livelihoods and ways of life depend on a healthy marine ecosystem. We are particularly concerned about bycatch in Alaska's fisheries and the effects of bottom trawling on seafloor habitats. Future limited access programs should facilitate solutions

to these problems including creating opportunities to convert bottom trawl fisheries to cleaner gears such as pots where possible.

We look forward to the hearing on Wednesday and opportunity to work with the Subcommittee in the coming months.

Sincerely,

DOROTHY CHILDERS
Executive Director

Thank you for the opportunity to submit comments for the record regarding Senate Bill 637, introduced by Senators Olympia Snowe and John McCain.

Alaska Marine Conservation Council (AMCC) is a community-based organization of fishing families and coastal residents dedicated to minimizing bycatch, conserving marine habitat, preventing overfishing, and preserving clean and sustainable fishing opportunities for Alaska's coastal communities. AMCC's members have substantial interest in policy development discussions regarding individual fishing quotas (IFQs) and other forms of limited access systems because of the potential impacts on conservation and the social and economic fabric of coastal communities. AMCC is a member of the Marine Fish Conservation Network.

We appreciate that S. 637 launches a public and open discussion of IFQs and other limited access programs in the 107th Congress. The legislative hearing on May 2nd allowed an opportunity for various perspectives to be aired in a public forum, which is entirely appropriate and welcome for an issue of such magnitude and long-lasting effect on our Nation's fisheries.

National Standards Are Needed for IFQs and Other Limited Access Systems

The use of a limited access system in a fishery is often discussed as an economic model that could be expected to have conservation benefits as a natural consequence of slowing down the race for fish and making fisheries more economically efficient. We know from case studies of IFQ programs around the world that particular outcomes are not achieved unless they are an explicit part of the initial design. The National Research Council emphasized the importance of design in its report to Congress.

> Confusion, conflict, and ambiguity about the relative importance and value of the objectives of an IFQ program can result in contradictions and inconsistencies in its design and implementation, making the program more vulnerable to unintended consequences and less likely to succeed. [1]

If properly designed, an IFQ or other limited access plan will be an economic model that links conservation benefits with long-term needs of our coastal communities and opportunity for fishing families.

IFQs or other limited access plans for the Nation's fisheries must include clear objectives for conservation and communities including:

1. Clean fishing (promotion of practices that minimize bycatch and adverse impacts on sea floor habitat)
2. Community stability
    a. Opportunity for community-based fleets
    b. Diverse fleets
    c. Market diversity and healthy competition
    d. Viable entry-level opportunities to coastal community residents
    e. Ownership concentration limits
3. Preserve healthy competition among seafood processors and prohibit processor monopolies (this precludes the award of exclusive processor rights)
4. Accountability by the public owners of fishery resources, through strict program and individual performance standards. Ensure a funding mechanism that is generated from the fishery, to support program management and enforcement.
5. Periodic performance review to assess how well the above objectives have been met & to ensure permits or quotas are awarded based on stewardship standards

General Comments on S. 637

Alaska Marine Conservation Council supports many provisions of S. 637, especially §3(e)(1)(D), which requires IFQ systems to promote sustainable management of the fishery, provide for fair and equitable allocation of individual quotas, minimize negative social and economic impacts on local coastal communities, ensure ade-

[1] National Research Council. 1999. *Sharing the Fish, Toward a National Policy on Individual Fishing Quotas*. National Academy Press. p. 197.

quate enforcement, and take into account present participation and historical fishing practices in the fishery.

- RECOMMENDATION: Strengthen §3(e)(1)(D) to provide councils with explicit conservation and community stability standards for IFQ and other limited access programs (specific recommendations are described below).

Other aspects of S. 637 that AMCC supports are: the 5 year sunset, periodic review of program performance, ability to revoke quota privileges, eligibility of fishermen and crew members to hold quota as well as vessel owners, and owner-operator requirements to maintain the IFQ privilege. AMCC also thanks Senators Snowe and McCain for excluding processors from the list of entities eligible to hold quota.

Specific Comments on S. 637—National Standards Should Clarify Conservation Objectives

Programmatic Accountability

Congress should clearly require IFQ programs and other limited access systems to be designed and held accountable through periodic performance reviews for achieving conservation objectives. Specific conservation objectives include minimizing bycatch, protecting marine habitat, preventing high-grading, rebuilding overfished stocks, and preventing overfishing.

- RECOMMENDATION: Include specific language that clarifies what "promote sustainable management of the fishery" §3(e)(1)(D)(i) means, using the conservation objectives listed above.

If IFQ and other limited access systems are required to build in conservation objectives, then program design will reflect those goals. For example, a regional council could identify shifting individual fishing practices toward cleaner gear types as a specific strategy to achieve conservation improvements in the fishery. This could be designed as an incentive that would both reward those gear types and fishing practices that have low bycatch and habitat impacts, as well as to encourage less selective gears to convert to less impact gears.

If Congress requires programs to be designed to meet universal conservation standards, then regional councils would have the flexibility to identify creative approaches within the specific fisheries they are managing.

Individual Accountability

S. 637 recognizes that holding an IFQ or other form of quota is a privilege that "may be revoked at any time . . . if necessary for the conservation and management of the fishery." [§2(e)(2)(A) and (B)] AMCC applauds Senators Snowe and McCain for this provision of the bill.

It is critically important that Congress direct the councils to hold individual quota holders accountable for their fishing behavior in an effort to reward those who fish with minimal bycatch and habitat impacts. In kind, councils should be given the authority and the direction to revoke the privilege of using fishing quota from those fishermen who do not meet acceptable stewardship standards.

- RECOMMENDATION: Require IFQ and other limited access programs to establish clear conservation criteria that individual quota holders must meet, including specific actions with measurable results to minimize bycatch, protect marine habitat, prevent high-grading, rebuild overfished stocks, and prevent overfishing.
- RECOMMENDATION: Require councils to develop a superior data collection system for IFQ and other limited access programs in order to 1) effectively evaluate programmatic and individual performance, 2) aid in refining elements of the program over time, and 3) identify unintended consequences that may need correction. [2]

Specific Comments on S. 637—National Standards Should Preserve Community Stability

1. Eligibility, Qualifying Years and Qualifying Landings

Criteria for eligibility, qualifying years and landings determine largely who will be allocated fishing opportunity and how it may be distributed in the future. This

[2] Sharing the Fish, p. 9.

decision therefore is a very significant feature for meeting the goals of limited access programs.[3]

Eligibility

Eligibility should include the following in order to be broad based enough to capture the profile of the fleet and communities:

- Vessel owners
- Skippers
- Crew
- Communities

S. 637 would *allow* a fishery management plan to include provisions that "provide a portion of the annual harvest in the fishery for entry-level fishermen, small vessel owners, or crewmembers who do not hold or qualify for individual quotas." §2(e)(4)(B) AMCC recommends this section be strengthened as follows.

- RECOMMENDATION: Alter §2(e)(4)(B) to *require* programs to reserve a portion of quota for entry-level fishermen, small vessel owners, or crewmembers who do not hold or qualify as initial recipients of individual quotas.

In *Sharing the Fish*, the National Research Council advises regional fishery managers to weigh a range of qualifying criteria for a community allocation including "proximity to the resource, dependence on the resource, contribution of fishing to the community's economic and social well-being, and historic participation in the fishery."[4]

- RECOMMENDATION: Add language to §2(e)(4)(B) to reserve an allocation of quota for communities, in order to enable the next generation an opportunity to make a living in the fishery.

Qualifying years

As with eligibility, qualifying years should be broad in order to avoid freezing today's snapshot in time and to achieve fairness reflective of longstanding dependence and patterns of participation by independent fishermen and communities.

- RECOMMENDATION: Specifically direct councils to use a broad range of qualifying years in determining who is eligible to hold quota.

Qualifying Landings

Landings should include only retained catch of target species to prevent assignment of history to bycatch (which effectively rewards past wasteful fishing practices).[5]

- RECOMMENDATION: Specifically direct councils to recognize only retained catch of target species if qualifying landings are used to determine who is eligible to hold quota.

2. Criteria for Initial Allocation

A broad range of criteria is important for the distribution of quota including individual catch history, long-term participation, dependence and good stewardship.[6] Dependence may be based on "geographic isolation; lack of employment alternatives; social, economic and cultural systems that have developed in these locations; and their dependence on fishing as a source of nutrition, livelihood and life style."[7]

3. Prevention of Corporate Consolidation and Vertical Integration

IFQs and other limited access programs if left on their own have a distinct tendency to evolve toward corporate consolidation and concentration of fishing opportunity into fewer and fewer hands at the expense of community stability.

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[3] Sharing the Fish, p. 142–143. "Dozens of different criteria can be used, each one more or less appropriate and fair, depending on the goals of the IFQ program . . . The particular years used to determine historical participation and eligibility can have profound social and distributional effects . . . "

[4] Sharing the Fish, p. 206.

[5] This would be consistent with management of Bering Sea pollock under the American Fisheries Act.

[6] Sharing the Fish, p. 204. "Examples of factors that may be taken into account beyond catch history include (1) the extent of dependence and commitment to fishing as a way of life . . . (2) evidence for or against good stewardship and acceptance of conservation goals (e.g. bycatch rates, violation histories, types of fishing gear used) . . . These factors reflect the conservation and equity goals of the Magnuson-Stevens Act . . . "

[7] Sharing the Fish, p. 19.

> The capacity of IFQs for transferability, consolidation, and leasing has led to a general concern that independent owner-operators of fishing vessels or crew members will be led into economic dependence on absentee owners as quota shares increase in value and small investors are excluded from the field. [8]

AMCC supports §2(e)(6)(C) of S. 637 requiring a person holding IFQ shares to actively engage in fishing to retain the shares we also recognize that not every fisher and vessel class can achieve 100 percent owner-on-board requirement. AMCC also recognizes the intent of S. 637 to prevent "absentee IFQ fishing" by prohibiting transferability. Through the experience of the halibut and sablefish IFQ program, however, Alaskans have found that there are some community benefits to allowing limited opportunities for transferability in certain cases, to control consolidation and allow for appropriate levels of transferability. Finally, it is critically important that IFQ and other limited access programs set limits on and enforce a maximum of level of quota that a person may hold.

- RECOMMENDATION: Consider adding other exceptions to transfer of shares, and require caps on the amount of quota share a person may hold.

4. Preserve healthy competition among seafood processors and prohibit processor monopolies (this precludes the award of exclusive processing privileges)

AMCC recognizes that conservation goals can be accomplished through IFQ and other limited access programs for fishermen—if they are designed properly—because they create an environment in which fisherman can slow down to fish more carefully. It is puzzling, however, what conservation objectives would be accomplished by processor quota shares. In fact, when processors have listed their rationale processor shares, their justifications focus on protecting their business investments. AMCC does not believe that protecting business investments is the role of the Magnuson-Stevens Act, especially when the business is benefiting from the exploitation of a public resource.

The American Fisheries Act has given Alaska some experience with fishermen-processor cooperatives, which sheds light on the potential negative impacts of awarding processor shares. In 1998 Congress passed the American Fisheries Act (AFA) to improve management of the Bering Sea pollock fishery by reducing the number of factory trawlers, assigning fishing and processing rights to specified corporations, and allowing for cooperatives (co-ops) to optimize fishing operations. However, because pollock corporations experienced an impressive financial windfall, there have been consequences for other fisheries.

Corporate consolidation already occurring in the pollock industry was facilitated by the AFA. For example, more and more catcher vessels in the fleet are owned by shore-based processing companies who, in turn, control foreign fish markets. If consolidation of fishing power occurs throughout other groundfish fisheries, there will be a deepening of the political imbalance, reducing the ability of coastal communities and vessel owner-operator fishermen to participate effectively in management decisions.

AFA-style co-ops promote vertical integration of fishing and processing companies. A system dominated by:

1. processor-owned fisheries,
2. processor-owned vessels, or
3. independent vessels delivering to a closed class of processors

has great potential to lower ex-vessel values of fish. Reduction in ex-vessel values reduces the local community and state tax bases available from fish landings.

Early reports on the AFA pollock co-ops suggest that they slow down the fishery and offer improved long-term planning, value-added product development; improved safety; improved quality; improved economic performance; and bycatch reduction. But the AFA-style co-op model does not fit other groundfish fisheries in Alaska, especially in the Gulf of Alaska where our community-based, owner-operator fleet is dominant. Gulf fishermen participate in multiple fisheries using various gear types, local processors handle groundfish as well as salmon and herring, and markets are diverse. A "closed class" of processors or the direct granting of processing shares could have devastating effects on markets, prices and opportunity for independent fleets. Management innovations for long-term conservation would be stifled. Processor ownership and vertical integration of seafood corporations hearkens back to

[8] Sharing the Fish, p. 3.

pre-Statehood days when salmon canneries controlled the fisherman and the markets.

- RECOMMENDATIONS:
  - Maintain the exclusion of processors from eligible holders of quota share.
  - Maintain the requirement in the Magnuson-Stevens Act that IFQ and other limited access programs must conform to existing anti-trust laws.
  - Limit fishing cooperatives to fishermen only.

Summary

AMCC thanks the Senate Oceans and Fisheries Subcommittee for holding its legislative hearing, and starting an open public dialogue on these important issues. The American Fisheries Act was the result of a "deal" that was cut in private meetings without all of the parties who have been impacted by it. That kind of policy-making does a disservice to the public process and to the public resources under discussion.

AMCC believes that IFQs and other limited access programs can be valuable tools in fisheries management *if* they are carefully designed with clear conservation and community stability objectives. It is important that Congress provide specific guidance to regional councils to help them design programs that respond to publicly held values for communities and the health of the marine ecosystem and fisheries resources. While councils may develop region and fishery-specific approaches to meet these objectives, the overall end result is universal across programs and different areas of the country. Specific conservation objectives include minimizing bycatch, protecting marine habitat, preventing high-grading, rebuilding overfished stocks, and preventing overfishing.

AMCC recommends some specific additions to S. 637 to maintain the social and economic fabric of coastal communities participating in fisheries. These provisions should maintain opportunity for community-based fleets, promote fleet and market diversity, allow viable entry-level opportunities to coastal community residents, and set limits on how much quota a person may hold. AMCC recommends that periodic performance reviews be required to assess how well the conservation and community stability objectives are being met both at the programmatic and individual quota holder level. AMCC urges Congress to preserve healthy competition among seafood processors and prohibit processor monopolies by not allowing processor quota.

Again, thank you for the opportunity to provide comment on S. 637 for the record.

ARGOS, INC.
Newport, OR, April 26, 2001

Senator Ron Wyden,
U.S. Senate,
Washington, DC.

RE: INDIVIDUAL FISHING QUOTAS, S. 637

Dear Senator Wyden:

My husband, Bob Eder and I are an owner/operator fishing business out of Newport, Oregon. We have two boats, small ones, by most fleets' standards; 40 ft and 66 ft long. My husband has been a commercial fisherman for 25 years. We have 7 crew members., with families who depend on us for their support. Primarily, we fish for Dungeness crab and sablefish, a species of groundfish that is managed by the Pacific Fishery Management Council. We also fish for pink shrimp, tuna, and halibut.

Since 1990 my husband and I have actively supported IFQ's as a tool to help manage this nation's fisheries. As best said by Dr. Rod Fujita of the Environmental Defense Fund "Our study indicates that IQs can reduce the pressure to over exploit the resource if properly designed and used in conjunction with a risk-adverse harvest guidelines and appropriate conventional management measures."

In considering the specifics of the bill before you, I note that there is a prohibition for the sale or lease of quota share. We strongly oppose this language. While there may and should, indeed, be limitations on the accumulation of quota share, to ensure that it remains in the hands of fishermen, to prohibit, in particular, the sale of quota share is self defeating. A properly designed quota share program can assist in what must be one of our national priorities; reduction of the overcapitalization in our nation's fishing fleet. If fishermen can buy, or sell quota share, after initial

allocation, it will allow for an exit strategy from the fishery, one that depends on the free market, and not on taxpayer dollars for a hand out.

We would also oppose any provision that requires that an allocation of quota share expire within 5 years of its initial establishment, regardless of any provisions subject to its reallocation or renewal.

A fisherman's life is fraught with change and uncertainty. Weather, markets, fish availability changes hourly. Good business planning involves some level of long range planning, to the extent possible. It would be impossible to make sensible investments in equipment and gear if indeed, the quota share that you were fishing could simply be reallocated, even if it did occur at some fixed point in time. Although the access to quota share is a "privilege," and not a "right," a provision to automatically revoke it in a fixed period of time is counterproductive to a goal of establishing a nation's fishing fleet that is appropriate to harvest the available resource.

Finally, although I don't see a provision for it here, I want to weigh in as being opposed to allocation of quota share for processors. First, fishermen aren't processors. We don't want to process, cut, freeze, or market fish. All we want to do is catch it. But we don't want to have to be restricted to selling to certain fish plants. All that would do is further reduce our ability to get the best price for our product. It's bad enough as it is right now, particularly in Northern CA, OR and WA, with too few fish plants, to get a competitive price; to allocate quota share to processors would do further damage.

Thank you for the opportunity to comment. I hope you find our thoughts helpful. I am always available and willing to provide testimony, whether in person or by letter, on this most important issue.

Very truly yours,

MICHELE LONGO EDER

JOINT PREPARED STATEMENT OF PROWLER FISHERIES, CLIPPER SEAFOODS, COURAGEOUS SEAFOODS & BARANOF FISHERIES AND ALASKAN LEADER FISHERIES

Prowler Fisheries, Clipper Seafoods, Baranof Fisheries & Courageous Seafoods, and Alaskan Leader Fisheries, hereby submits the following comments on S.637, a bill to amend the Magnuson-Stevens Fishery Conservation and Management Act to authorize the establishment of individual fishery quota systems ("IFQs"). These companies collectively own and operate eleven freezer longliners that fish for Pacific cod in the Bering Sea and Aleutian Islands ("BSAI") area, and include individuals who have served on the North Pacific Fishery Management Council and its advisory committees, and are dedicated to the conservation of marine resources.

The potential addition of IFQs as a federal fishery management tool is an important matter and warrants careful Congressional consideration. These companies support appropriate efforts to promote rational utilization of fishery resources and understand that Congress sets the overarching policy guidance for federal fishery management activities under the Magnuson-Stevens Act. At the same time, these companies support strongly the role of the Regional Fishery Management Councils, specifically the North Pacific Council, in development of the detailed frameworks that constitute fishery management plans. Each fishery is distinct, and requires management measures tailored to meet the needs of the participants in the fishery balanced against the health of the resource.

The freezer longline sector of the Pacific cod fishery does not presently operate under nor is advocating for the formation of an IFQ system for this fishery. However, it is concerned that any Congressional action to set a national IFQ policy will have an impact on future management options as the fleet seeks to pursue an appropriate and effective approach to rationalization.

Background on the Freezer Longline Fleet

The freezer longline sector of the Pacific cod fishery consists of 36 federally licensed vessels homeported in Alaska and Washington State. This small fleet removes their portion of the BSAI Pacific cod total allowance catch ("TAC") from an area exceeding 50,000 square mile area, over a nine-month period of time. Their method of fishing, bottom longlining, is very selective and results in a slow catch rate.

From the outset, fishermen who chose to participate in the freezer longline sector of the Pacific cod fishery recognized that this gear type is more environmentally-friendly. Freezer longline bycatch rates are considerably lower than the trawl fleet, and longliners have less of a direct impact on the marine environment, specifically the seabed. In situations where bycatch concerns have arisen, the fleet has been

proactive in its efforts to further minimize interactions. For example, the freezer longline industry in the North Pacific has self-imposed seasonal restrictions during the summer months to avoid periods with high bycatch potential. There also has been industry-funded research to reduce halibut bycatch mortality and interactions with sea birds.

In general, this group of freezer longliners supports federal efforts to promote the rational management of specific regional fisheries. Pursuant to the Magnuson-Stevens Act, the National Marine Fisheries Service ("NMFS") and Regional Fisheries Management Councils are required to develop and implement fishery management plans designed to promote a healthy and sustainable fisheries. The continual tension between the interest in fully exploiting a particular fishery and conserving the resource has led to numerous instances of overcapitalization and the consequences of the "race for fish"—leading to an economically and biologically unsustainable fishery.

Despite strong successes by the North Pacific Council to avoid such an outcome, there have been several notable instances, such as the halibut fishery, where an inability to control the early entry of vessels into a fishery produced inordinate pressure of the resource and lowered market values. However, the freezer longline fleet currently is not considered overcapitalized, and is not engaged in a "race for fish."

Specific comments on S.637 and potential IFQ systems

The above companies are concerned that several provisions of S.637 could set adverse precedents that could effect the fleet's ability to pursue and implement rationalization measures. In particular, the following sections and provisions could be inhibiting:

- **Sec. 2(e)(2)(E)** contains a five year expiration date. By mandating such a short term sunset provision, the bill would undermine the credibility of any IFQ program by creating tremendous uncertainty at the outset. Subsection (F) following this provision allows an expired IFQ program to be "renewed, reallocated, or reissued," which does little to instill confidence that a fishery participant can reliably make the necessary short and long term business and financial decisions.

  The bill should be amended to eliminate a national sunset provision. Instead, as provided in Section 2 (e)(1)(C), Regional Fishery Management Councils should be authorized to require periodic reviews, and make modest revisions to an IFQ plan after such a review.

- **Sec. 2(E)(4)(B)** seeks to set aside a small potion of TAC in each fishery for new entrants, small vessel owners or crewmembers. This is an example where "one size does not fit all." The average length for a freezer longliners is over 135 feet and are not readily within the financial reach of entry-level fishermen.

  If retained, this provision should be stated clearly as discretionary authority for use by the Regional Councils.

- **Sec. 2(E)(6)** prohibits the transferability of IFQs. If the policy concern relates to consolidation of quota shares into the hands of a small number of participants, it is more appropriate to authorize the Councils to place caps or limits on ownership levels. The Councils possess the requisite understanding to tailor an IFQ plan to a specific fishery.

  The Councils should determine ownership limits for each proposed IFQ plan.

- **Allocating quota shares to processors**

  In the context of the freezer longline sector of the Pacific cod fishery, there is no factual, rational justification, or any other nexus to support the assignment of quota shares to shore-based processors. Freezer longliners process 100 percent of their Pacific cod onboard. In addition, the fleet already participates in the Community Development Quota ("CDQ") program, which is designed specifically to promote economic development in communities in the BSAI region.

  Any federal legislation to establish an IFQ system should not authorize allocation of quota shares to shore-based processors.

- **Retaining the option to form cooperatives**

  An IFQ system is one management regime that has the potential to contribute to further rationalization efforts to support sustainable fisheries. A similar approach involves the formation of fishery cooperatives to promote a decision-making process within a specific fleet that can address such issues as the "race for fish," as well as increasingly complicated environmental matters.

  As Congress formulates a national policy on IFQs, careful consideration should be given to ensure that alternative management measures such as fishery co-

operatives are allowed to be examined and implemented by the Regional Fishery Management Councils.

Status of rationalization efforts in the Freezer Longline Sector of the Pacific cod fishery

The freezer longline fleet is working within the structure of the North Pacific Council to ensure that its relative stability and sustainability are maintained through prudent management measures. Within the past year, two important management steps have moved forward: 1) final NMFS action on apportionment of TAC among fixed gear participants in the Pacific cod fishery; and 2) North Pacific Council passage of a license limitation regime for the freezer longline fleet. The first step provides greater certainty in the amount of Pacific cod available for harvest by freezer longliners and establishes a basis for annual and longer term business decisions. The second step will prevent overcapitalization of the fleet by prohibiting new entries into this sector of the Pacific cod fishery which has been determined to be fully utilized. This is a critical mechanism needed to avoid the "race for fish" and the consequences of overfishing.

Conclusion

Prowler Fisheries, Clipper Seafoods, Baranof Fisheries & Courageous Seafoods, and Alaskan Leader Fisheries support the role of Congress in examining potential mechanisms to promote more effective management of the nation's fishery resources. IFQs may provide one tool to achieve this goal, but it is inappropriate to impose a single format for the diverse fisheries conducted around the country. These companies strongly encourage Congress to devise a policy that allows the Regional Fishery Management Councils to determine the most effective management regime for each specific fishery.

ALASKA CRAB COALITION
Seattle, WA, May 15, 2001

Hon. Olympia J. Snowe,
Chairperson,
Senate Subcommittee on Oceans and Fisheries
Washington, DC.

Dear Senator Snowe:

The Alaska Crab Coalition (ACC) wishes to provide comments on proposed amendments to the Magnuson-Stevens Fisheries Conservation and Management Act, specifically on reestablishment of authority to establish individual fishing quota (IFQ) systems. For fifteen years, the ACC has been representing crab harvesting vessels that operate in the EEZ of the Bering Sea and Aleutian Islands (BSAI) to the State of Alaska Board of Fisheries, Alaska Dept. of Fish and Game, the North Pacific Fishery Management Council, the Commerce Department and the U.S. Congress. For almost as many years, the ACC has advocated the establishment of IFQs in BSAI crab fisheries as a management tool to improve conditions for the safety of life at sea and to enhance conservation and sustainability of the king and tanner crab resources.

The crab resources in the Bering Sea are overall in a very depressed state, and consequently the crab fleet, the shorebased sector of the industry and coastal communities depending on the fisheries have sunk into a severely stressed financial condition. In the year 2000, over 250 crab fishing vessels, mostly small businesses, had only eleven days of crab fishing to earn revenue for six to eight dependent families each. This is inadequate to maintain the economic survival of the fleet, and it is facing a similar outlook in 2001 and for the next two to five years.

Rationalization and decapitalization of the industry through a quota-based system is drastically needed. With the support and encouragement of the North Pacific Fishery Management Council, significant progress has been made in the last eighteen months on the development and negotiation of a balanced quota-based program that will treat all sectors fairly, fishermen, processors and communities.

The ACC wishes to note that it is a firm supporter of the buyback program authorized in Public Law 106–554, but the association views the buyback program as an initial first step towards a long term solution in decapitalizing the Bering Sea crab industry. The ACC worked long and hard with other fishermen and communities on the development of language in PL 106–554 that directs the NPFMC to develop an analysis for rationalization of Bering Sea crab fisheries that includes individual fishing quotas, processor quotas, cooperatives and quotas held by communities. The analysis is to be submitted to Congress early next year.

In closing, the ACC wishes to draw attention to NPFMC and industry progress on the development of a rationalization program for BSAI crab, as noted in the attached letter of Mr. David Benton to the Secretary of Commerce, dated May 2, 2001.

Thank you for the opportunity to provide these comments.

Sincerely,

ARNI THOMSON,
Executive Director

NORTH PACIFIC FISHERY MANAGEMENT COUNCIL
Anchorage, AK, May 2, 2001

The Honorable Donald Evans,
U.S. Secretary of Commerce,
Hoover Building,
Washington, DC.

Dear Secretary Evans:

In order to update you on our Council's efforts regarding rationalization of the BSAI crab fisheries, I would like to relate the most recent activities of the Council. At our recent April meeting, the Council continued its discussions of rationalizing the crab fisheries, including a review of a report from our Crab Rationalization Committee and additional recommendations from our industry Advisory Panel. This process has evolved from a focus on co-op style management to that of some form of IFQ program, including provisions for inclusion of processors and alternatives for 'regionalization' to preserve processing activities within certain coastal regions. This 'three-pie' concept contains a myriad of alternatives and options, which the Council will once again review at our June meeting where we intend to finalize the alternatives for a formal analysis. Our staff is currently working on a 'white paper' which will scope out the specifics of that analysis in order to assist the Council's deliberations in June.

This analysis could be completed later this year, in time for Council consideration in December, with final action likely in February of 2002. Once completed, we would also forward that analysis to Congress, per the provisions of the recent appropriations bill which directs the Council to undertake such an analysis of crab rationalization options. As part of the overall process to rationalize the crab fisheries, I also want to reiterate our Council's support for the buyback program which was also legislated in the recent appropriations bill. Such a buyback will be a very important first step in the rationalization process, and availability of the authorized Congressional funding of $50 million will likely be critical to the success of the buyback program.

In closing, I wanted to assure you that this Council is still committed to the overall rationalization process for the crab fisheries, and I hope that this update is useful. Anything your office can do to expedite the buyback process will certainly facilitate that rationalization process. Thank you once again for your attention to this and other Council issues in the North Pacific.

Sincerely,

DAVID BENTON
Chairman

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